

RIDESHARING APPLICATIONS:
ILLEGAL “HITCHHIKING-FOR-HIRE” OR
SUSTAINABLE GROUP RIDING?

**A Legal and Policy Primer for
Ground Transportation Regulation**

MAY 2013

Matthew W. Daus, Esq.

Partner & Chairman, Transportation Practice Group
Windels Marx Lane & Mittendorf, LLP
156 West 56th Street
New York, NY 10019

TABLE OF CONTENTS

	<u>Page</u>
I. Introduction.....	1
II. Discussion.....	3
What is Ridesharing?	3
a. Ridesharing Today	4
b. Government Programs which have Initiated Ridesharing	5
c. Societal and Personal Benefits of Ridesharing	5
III. Description of Ridesharing Apps.....	7
Go Loco Inc.	7
SideCar LLC.	8
Zimride, Inc. d/b/a Lyft.....	9
Tickengo.	10
InstantCab.	11
RideScout.....	11
Avego.....	12
PickupPal.	12
Uber Technologies, Inc.	13

IV.	Regulatory Issues	14
	A. Does Ridesharing Require a Predetermined Route?	14
	B. Should Compensation to Drivers be Permitted?	15
	C. Registration of Companies that "Coordinate" Ridesharing.....	18
	D. Airport Issues	19
	E. Proper Worker Classification Status of Drivers	20
	F. Insurance Issues	23
V.	Overview of Jurisdictions Currently Addressing Ridesharing	25
	California	26
	(a) Regulatory Framework	26
	(b) Ridesharing Exemptions	27
	(c) How is California Addressing Ridesharing Apps	28
	(i) San Francisco	29
	(ii) Los Angeles.....	30
	New York City	31
	(a) Regulatory Framework.....	31
	(b) Ridesharing Not Defined.....	31
	(c) How is New York City Addressing Ridesharing Apps	31
	Washington, DC.....	32
	(a) Regulatory Framework	32
	(b) Ridesharing Exemptions	33
	(c) How is DC Addressing Ridesharing Apps	33

Philadelphia, Pennsylvania	35
(a) Regulatory Overview.....	35
(b) Ridesharing Exemptions	35
(c) How is Philadelphia Addressing Ridesharing Apps?	36
Boston, Massachusetts	38
(a) Regulatory Framework.....	38
(b) Ridesharing Not Defined.....	38
(c) How is Boston Addressing Ridesharing Apps	38
Seattle, Washington	38
(a) Regulatory Framework.....	38
(b) "Commuter Ride Sharing"	39
(c) How is Seattle Addressing Ridesharing Apps.....	40
Chicago, Illinois	40
(a) Regulatory Framework.....	40
(b) "Shared Ride" Defined	41
(c) How is Chicago Addressing Ridesharing Apps	41
Austin, Texas	42
(a) Regulatory Framework.....	42
(b) Ridesharing is not Defined.....	43
(c) How is Austin Addressing Ridesharing Apps?	43
VI. IATR Efforts and Model Regulations.....	46
VII. Conclusion	48

VIII.	APPENDIX A	49
	Model Rideshare Regulation.....	49
IX.	APPENDIX B	50
	1. California Public Utilities Commission Citations/Cease and Desist Letters	50
	2. San Francisco International Airport Cease and Desist Letter	50
	3. Austin Transportation Department Cease and Desist Letter.....	50
	4. City of Dallas Cease and Desist Letter	50
	5. Philadelphia Parking Authority Citations/Cease and Desist Letter	50
	6. New York City Taxi & Limousine Commission Decision.....	50
	7. Los Angeles Department of Transportation Cease and Desist Letters	50

INTRODUCTION*

The introduction of new transportation technology companies purporting to provide ridesharing services came in the Summer of 2012. Such companies offer smartphone rideshare applications (“app(s)”) which provide free online booking for what are termed “ridesharing” services.¹ Passengers request a ride from a private passenger vehicle driven by a non-commercially licensed driver through the app, which then communicates the passenger’s location to drivers via GPS. The rideshare apps also communicate to the passenger a suggested fare based on similar rides.² Many of these apps also have a rating system that allows for drivers and passengers to rate each other after the trip is completed. A passengers’ credit card information is saved within the system of the app so that they may be identified for future trips.

Generally, any state-registered vehicle with valid personal vehicle insurance may be used to provide these services, and any validly licensed U.S. citizen may become a driver.³ Ridesharing app companies claim to conduct background checks of all drivers with whom they engage to provide “rideshare” services. Ridesharing apps advertise that passengers do not have to pay for the ride and that all fare donations are voluntary.⁴ However, the apps will prompt passengers to accept paying a “suggested” donation amount for the trip. A percentage of the suggested donation goes to the driver, and the remaining balance goes to the rideshare app company.

The advent of ridesharing apps has raised several public safety and consumer protection issues. Regulators in many jurisdictions are debating whether the business model of ridesharing apps meet the definition of ridesharing under their local rules, or whether the operations are more similar to for-hire vehicle service. The fact that money is being exchanged between passengers,

* This Report was co-authored by Associate Jasmine K. Le Veaux, with contributions from Associate Christina Sorbera, both members of the Transportation Practice Group at Windels Marx Lane & Mittendorf, LLP.

¹ For purposes of this Report, we refer to the apps provided by such companies as “ridesharing apps”, although we neither concede nor endorse the proposition that such apps are providing ridesharing services as may be defined by local regulation.

² <http://transportationreviews.com/news/>

³ <http://www.side.cr/#drive>

⁴ <http://allthingsd.com/20120626/sunil-pauls-sidecar-app-will-flag-a-strangers-car-for-you/>. Upon information provided on the July 19th, 2012 conference call, we understand that the contrary may be true – whether a passenger pays the “suggested donation” has no bearing on his/her rating because drivers do not know if a passenger paid the at the time they rate the passenger.

drivers and the ridesharing app company gives many regulators the impression that the operations more similarly resemble the latter. If classified as for-hire service, such ridesharing app companies, as well as associated drivers and vehicles providing transportation services, would be subject to several government-mandated public safety requirements that are imposed on members of the for-hire transportation industry.

Also, the question of how insurance companies define such services and whether personal automobile insurance policies will cover accidents that may arise when the above-described transportation services are provided is being hotly debated. Throughout the country, many rideshare app companies have received requests from regulators to produce their insurance policies in order to provide clarity to the question of whether passengers, drivers and vehicles involved in transportation booked through ridesharing apps will be covered if an accident occurs during the course of such transportation. Furthermore, some regulators are considering the requirement that businesses which coordinate ridesharing services among members of the general public (and not particular membership groups like *e.g.*, a church group or employees at a common place of work) should register with the local transportation authorities so that local government may have some level of oversight over the services provided. Proponents of this idea believe it is an effective means to (a) evaluate whether the ridesharing activity is resulting in a societal benefit (*e.g.*, reduced traffic and/or gas emissions); (b) to ensure that such business are not veering into the for-hire transportation services; and (c) to ensure that passengers and drivers—who are strangers – should be able to identify one another should there be an incident, accident or other occurrence.

This Report attempts to highlight these, and other major issues that have come to the forefront of regulatory debate due to the advent of ridesharing app companies. We summarize the business operations of several of the most popular ridesharing app companies that have proliferated throughout the U.S. in the past three (3) years. In addition, we feature seven major jurisdictions – California; New York City; Washington, DC; Philadelphia, Pennsylvania; Boston, Massachusetts; Seattle, Washington; Chicago, Illinois and Austin, Texas – in which ridesharing app companies are active. This Report outlines the regulatory framework in such jurisdictions, addresses how local regulations define for-hire vehicle service, whether the local regulations define “ridesharing”, and also discusses how the local transportation authorities are dealing with the ridesharing app companies that are active in their jurisdictions. Finally, annexed hereto as an

Appendix, is a proposed definition for “Rideshare”, which we believe draws a clear demarcation between activity which is truly ridesharing and activity that is, in actuality, for-hire transportation service. Further, this Report is being prepared, at the request of the International Association of Transportation Regulators (“IATR”), for use by policymakers, stakeholders, the public, and will be updated periodically on the website of Windels Marx Lane & Mittendorf, LLP (“Windels Marx”) at www.windelsmarx.com.

DISCUSSION

What is Ridesharing?

“Ridesharing” is the term used to describe grouping travelers into common trips by car or van through “carpooling” or “vanpooling.”⁵ At its outset, ridesharing did not, and was not intended to result in financial gain for the driver.⁶ The purpose of ridesharing was based on common origin and/or destinations between drivers.⁷ Cab sharing, taxis and jitneys and other for-profit transportation providers are therefore not typically considered a part of not-for-profit ridesharing schemes.⁸ Traditionally, there were three ways to classify ridesharing: (i) “acquaintance-based” or “fampools”, which typically form among family, friends and co-workers; (ii) “organizational based” which require participants to join an organization to receive access to rideshare service; and (iii) “ad hoc” or “casual carpooling”, which require little relationship between participants, does not require membership, and includes self-organization, incentives, notice boards and various computerized ride-matching products.⁹

The use of ridesharing has declined in the United States since the 1970s. In 1970, 20.4% of U.S. workers commuted to work by carpool and by 2008 that number had declined to 10.7%. From 1999 to 2004, ridesharing systems were focused on mitigating traffic congestion and garnering critical mass.¹⁰ Online ridematching services were created, which utilized an internet-based computerized approach to ridesharing and employed GIS (geographic information

⁵ Transport Reviews, Vol. 32, No. 1, 93-112, January 2012, “Ridesharing in North America: Past, Present and Future”, by Nelson D. Chan and Susan A. Shaheen.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

systems) technology to match potential users travelling to and from similar places.¹¹ Some software companies developed ridematching platforms which could be purchased by a public agency or employer for a monthly fee.¹² Traveler information services that provide telephone hotlines for traveler information that are accessed by dialing “511”, were also developed.¹³

a. Ridesharing Today

Ridesharing activities from 2004 to the present have been referred to as “technology-enabled ride-matching.”¹⁴ This period is most notable for the widespread integration of the internet, mobile phones, and social networking into ridesharing services.¹⁵ The focus has been on reducing climate change, the growing dependence on foreign oil, and traffic congestion.¹⁶ This period is notable for (i) the partnerships that were developed between ridematching software companies and localities and/or large employers, (ii) financial incentives that were provided through sponsors for “green trips”, and (iii) real-time ridesharing services.¹⁷

Real-time ridesharing services refer to the use of ridesharing apps that use GIS and GPS (global positioning system) technologies through smartphones to organize ridesharing between drivers and passengers in real-time.¹⁸ This enables drivers and passengers to organize trips moments before they begin, or while a trip is occurring, with the goal of addressing traditional inconveniences of carpooling and vanpooling, such as wait-time.¹⁹

The federal government refers to real-time ridesharing as “dynamic ridesharing”.²⁰ Federal and local governments are promoting dynamic ridesharing which operates on-demand and in real-time, allowing for passengers to be picked-up anywhere along a designated route. Drivers can utilize passenger information to assist them with real-time decision making on

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ U.S. Department of Transportation, Federal Highway Administration, “What is Dynamic Ridesharing?” By: Myron Swisher, SAIC, July 28, 2011.

whether to rideshare, and passengers can connect with a driver through smartphone apps and GPS location.²¹

b. Government Programs which have Initiated Ridesharing

The Federal Congestion Mitigation and Air Quality Improvement Program, made possible through various sources of federal, state and local funding, seeks to promote ridesharing initiatives.²² Federal discretionary grant funding was also used to fund Value Proving Pilot Programs (“VPPP”) and Exploratory Advanced Research²³. VPPP has provided more than \$9.7 million in grants to California, Florida, North Carolina, Minnesota, Texas, Virginia and Washington in connection with a 2010 national initiative of the Federal Highway Administration (the “FHWA”) to encourage innovative strategies to relieve congestion.²⁴

Among the grant money given, \$158,400 was funded to Caltrans/Santa Barbara County for a Dynamic Ridesharing with Pricing Incentives Program (the “Program”).²⁵ The purpose of the Program was to test carpooling systems that use participation incentives.²⁶ The Santa Barbara Dynamic Rideshare program would target South Coast Highway Commuters and students at the University of California, Santa Barbara and Santa Barbara City College, giving them the ability to quickly find potential carpoolers on an as-needed basis to serve trips not easily served on the more traditional Traffic Solutions Online carpool matching system.²⁷

c. Societal and Personal Benefits of Ridesharing

Traditional ridesharing models have both societal and personal benefits. On a societal level, ridesharing reduces the number of vehicles needed by travelers, which thereby reduces energy consumption, emissions, traffic congestion, and parking demand.²⁸ On an individual level, ridesharing creates cost savings for participants due to shared travel costs, travel-time

²¹ *Id.*

²² U.S. Department of Transportation, Federal Highway Administration, “What is Dynamic Ridesharing?” By: Myron Swisher, SAIC, July 28, 2011.

²³ *Id.*

²⁴ U.S. Department of Transportation, Federal Highway Administration, FHWA 29-10, August 2, 2010, “FHWA Announces \$9.7 Million in Grants to Fund Innovative Approaches to Congestion.”

²⁵ *Id.*

²⁶ *Id.*

²⁷ SBCAG, Dynamic Ridesharing Consultant Agreement, January 20, 2011.

²⁸ Transport Reviews, Vol. 32, No. 1, 93-112, January 2012, “Ridesharing in North America: Past, Present and Future”, by Nelson D. Chan and Susan A. Shaheen.

savings by utilizing high-occupancy vehicle (HOV) lanes, and reduced commuter stress.²⁹ There could also be preferential parking and other incentives for rideshare participants.³⁰

Despite the benefits of ridesharing, studies have shown that personal preference is generally to ride alone.³¹ An early study of attitudes toward carpooling showed that people see the benefits to carpooling, but are not inclined to give up the flexibility and convenience of the private vehicle.³² The desire for personal space, time alone, and aversion to social situations also hamper the desire of individuals to rideshare.³³

Ridesharing can be promoted through various forms of incentives. For example, Nu-Ride is an online ridesharing club that partners with public agencies, employers and businesses to reward its members with points when they carpool, vanpool, take public transport, bike, walk or telecommute.³⁴ Points could be redeemed for restaurant coupons or shopping discounts, among other things.³⁵ Nu-Ride is a form of “green trip” sponsored incentive ridesharing.³⁶ Although the traditional purpose of ridesharing was not for financial gain, offering financial rewards may incentivize people to rideshare. These incentives could include free or discounted access to high-occupancy toll lanes, payment to employees for not using their employment parking space, and/or providing tax-free ridesharing expenses.³⁷

The particular interest in dynamic or “real-time” ridesharing today is based upon many of the same benefits as more traditional ridesharing models. Dynamic ridesharing reduces vehicle miles traveled, which mitigates congestion, reduces carbon and air-pollutant emissions and reduces new infrastructure expenditures.³⁸ Dynamic ridesharing also has the potential to provide socially necessary transportation to groups such as senior citizens and college students who either do not own cars, are who are not comfortable driving.³⁹ Dynamic ridesharing is viewed as a more efficient use of existing infrastructure by filling empty seats in vehicles that are already

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*; see also http://www.nuride.com/nuride/main/main_checked.jsp

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ U.S. Department of Transportation, Federal Highway Administration, “What is Dynamic Ridesharing?” By: Myron Swisher, SAIC, July 28, 2011.

³⁹ *Id.*

making trips.⁴⁰ Despite these benefits, the full potential of ridesharing is unclear and there is much debate within the industry over whether to emphasize technology and social networking, or financial incentives and enhanced casual carpooling.⁴¹ In addition, the abundance of online ridesharing has resulted in disparate, non-standardized databases, which leave many programs lacking critical mass.⁴²

Indeed, technology will play a critical role in the future of ridesharing, addressing most notably, the question of whether the critical mass barrier could be overcome through the use of various ridesharing platforms.⁴³ It is expected that over time, ridesharing will increase its interoperability among services, technological integration and policy support.⁴⁴ Moreover, the tension between the traditional concept of ridesharing and the new business model presented by the advent of “ridesharing apps” will need to be addressed by jurisdictions in order to further the laudable goals of providing real, viable, and reliable options for transportation services to the public.

Description of Ridesharing Apps

The most popular ridesharing apps that have proliferated throughout the U.S., as well as internationally, include *inter alia*, Side.cr LLC (“SideCar”) and Zimride, Inc. d/b/a Lyft (“Lyft”). Most of the public is, by now, also familiar with Uber Technologies, Inc. (“Uber”). Uber became popular by providing electronic hailing services (“e-hails”) for taxicabs and limousines, but recently began offering ridesharing services through its app. In addition, there are several smaller ridesharing app companies, such as GoLoco Inc. (“GoLoco”) and RideScout, as well as Tickengo and InstantCab, both born out of San Francisco; the birthplace of the app movement.

Go Loco Inc.

GoLoco is an internet-based ridesharing/carpooling organization with a web-based headquarters in Cambridge, Massachusetts.⁴⁵ It operates largely across the United States and

⁴⁰ *Id.*

⁴¹ Transport Reviews, Vol. 32, No. 1, 93-112, January 2012, “Ridesharing in North America: Past, Present and Future”, by Nelson D. Chan and Susan A. Shaheen.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ www.goloco.org

Canada.⁴⁶ The organization's goal, according to its founder, Robin Chase⁴⁷, is to provide a member-based network through which its members can carpool amongst themselves and share in the total cost of transportation.⁴⁸ GoLoco does not charge a fee to facilitate carpool arrangements. However, it does assess a 10% transaction fee when a trip is actually shared. GoLoco determines the cost of a shared trip by applying an average of 0.50 cents per mile and is responsible for collecting "funds" from passengers and paying drivers from member accounts. Drivers are not required to have a for-hire vehicle license and GoLoco does not conduct background checks on drivers, or confirm whether drivers have proper insurance.

Side.cr LLC

SideCar is an app company based in San Francisco, California. SideCar operates in the San Francisco Bay Area, Seattle, Washington, DC, Chicago, Philadelphia and Austin. It has also announced plans to expand its service to Boston and New York City. In early February 2013, as part of its expansion into new cities, SideCar acquired the Austin-based ridesharing app company, Heyride.⁴⁹

SideCar does not require its drivers to hold a taxi or for-hire vehicle license nor does it require its vehicles to be licensed or insured as for-hire vehicles. SideCar claims to conduct its own background checks on drivers and their vehicles through an internal interview process and criminal check. Passengers are not required to pay for SideCar trips, but are prompted by the app to make a "suggested donation" to the driver at the conclusion of the ride. The suggested donation amount prompted is based on an undisclosed metric. SideCar drivers are paid, but it is unclear from whom or for how much. SideCar receives a 20 percent share of "suggested" payments.⁵⁰

SideCar maintains a passenger/driver rating system that allows for either party to rate the trip based on any number of factors. To open a SideCar account, one must have a smartphone, credit card, and one must indemnify SideCar from any and all liability, including for gross negligence. SideCar argues that it is exempt from regulatory oversight as a result of its

⁴⁶ <http://www.csmonitor.com/Environment/Living-Green/2008/0724/how-to-hitch-a-ride-on-the-web>

⁴⁷ Robin Chase is a co-founder of the Zipcar fame. See http://www.wired.com/cars/energy/magazine/15-06/st_chase

⁴⁸ <http://www.goloco.org/help>

⁴⁹ Further detail on the ongoing dispute between the City of Austin and certain "ridesharing" app companies is discussed *infra*.

⁵⁰ <http://allthingsd.com/20120626/sunil-pauls-sidecar-app-will-flag-a-strangers-car-for-you/>

“ridesharing” business model that it claims is based on “voluntary donation” rather than a fare. SideCar advertises that it has a \$1,000,000 excess insurance coverage for its drivers in the state of California and a \$1,000,000 Guarantee Program for its drivers in other states.⁵¹

Zimride, Inc. d/b/a Lyft

Lyft is an app launched by San Francisco-based company, Zimride, Inc. Vehicles operating Lyft ridesharing trips can be easily identified by the giant pink mustache hanging from the front bumper of the car. Lyft currently operates in the San Francisco Bay Area, Los Angeles, Seattle and Chicago and has announced plans to expand its service to cover more cities in the U.S. Lyft directly connects Lyft passengers with Lyft drivers.⁵² Lyft has had partnerships with a number of U.S. and Canadian colleges, universities and companies, each with its own website to enable users to rideshare.⁵³ The company also uses Facebook as a platform to attract public users.⁵⁴

Lyft does not require its drivers to hold either a taxi or limousine license nor does it require its vehicles to be licensed or insured as for-hire vehicles.⁵⁵ Lyft claims to conduct its own background checks for vehicles through an internal interview process and criminal check.⁵⁶ Passengers may elect to pay for Lyft trips, and are prompted by the app to make a “suggested donation” to the driver at the conclusion of the ride. The suggested donation amount prompted is based on an undisclosed metric.⁵⁷ If passengers forget to pay, or do not enter zero to indicate no donation amount, the app automatically pays the suggested amount.⁵⁸ Lyft drivers are paid, but it is unclear from whom or for how much. It is also unclear what percentage of revenue, if any, Lyft takes from the “suggested” donation received by drivers.

Lyft maintains a passenger/driver rating system that allows for either party to rate each other.⁵⁹ To open a Lyft account, one must have a smartphone, credit card, and one must indemnify Lyft from any and all liability, including for gross negligence. Lyft has a \$1 million

⁵¹ http://www.side.cr/driver_guarantee

⁵² <http://www.lyft.me/jobs?job=Support-Associate>

⁵³ Transport Reviews, Vol. 32, No. 1, 93-112, January 2012, “Ridesharing in North America: Past, Present and Future”, by Nelson D. Chan and Susan A. Shaheen.

⁵⁴ *Id.*

⁵⁵ <http://www.lyft.me/safety>

⁵⁶ <http://www.lyft.me/safety>

⁵⁷ <http://blog.lyft.me/>

⁵⁸ <http://www.buzzfeed.com/justinesharrock/life-behind-the-wheel-in-the-new-rideshare-economy>

⁵⁹ <http://www.utsandiego.com/news/2013/feb/03/ride-hailing-apps-offer-new-way-to-get-around-town/?print&page=all>

per occurrence excess auto liability policy. The policy applies once a driver has accepted a ride and when a driver has a passenger matched from the Lyft app in his or her car. It is designed to cover driver liability for property damage and/or bodily injury of passengers and/or third parties (up to a limit of \$1 million). The policy coverage is limited to liability only and does not provide coverage for collision, comprehensive or wear and tear damage to a driver's vehicle.⁶⁰

Tickengo

Tickengo is a technology company that was founded in 2011⁶¹ and is based in Daly City, California.⁶² Tickengo represents that it is currently present in San Francisco, Los Angeles, Boston, Chicago, Houston, Austin, Seattle, Washington, DC and New York City.⁶³ The company provides “ridesharing” dispatch services by matching registered drivers with passengers that have downloaded the app.⁶⁴ The Tickengo app allows passengers to send a ride request to a community of drivers using the app or on the web, specifying the location, time, quantity of seats wanted and amount the passenger is willing to pay.⁶⁵ The app then requires the passenger to enter credit card billing information and the transaction will complete once the ride takes place.⁶⁶ The passenger receives a notification when their ride request has been accepted and can access a driver’s profile and contact information.⁶⁷ Tickengo does not conduct background checks on drivers nor does it confirm that vehicles have proper insurance coverage.⁶⁸ In fact, there is little barrier to entry to be a driver with Tickengo— drivers simply need to create an account and list a car in good working condition.⁶⁹ The price model of the Tickengo app service is based on a system whereby passengers will donate a dollar amount that they feel will be sufficient to cover the cost of their driver.⁷⁰ There are currently 10,000 drivers who have signed up with Tickengo throughout the U.S.⁷¹

⁶⁰ <http://www.lyft.me/drivers>

⁶¹ <http://techcrunch.com/2011/04/04/social-transportation-platform-tickengo-scores-seed-money-from-kima-ventures/>

⁶² <http://www.i-newswire.com/tickengo-joins-collaborative-movement/191417>

⁶³ <https://tickengo.com/>

⁶⁴ <https://tickengo.com/a/i/howItWorks>

⁶⁵ <https://tickengo.com/a/i/howItWorks>

⁶⁶ <https://tickengo.com/a/i/howItWorks>

⁶⁷ <https://tickengo.com/a/i/howItWorks>

⁶⁸ <https://tickengo.com/a/becomedriver/>; see also <http://techcrunch.com/2013/02/18/tickengo-ride-share/>

⁶⁹ <http://techcrunch.com/2013/02/18/tickengo-ride-share/>

⁷⁰ <https://tickengo.com/a/i/faq>

⁷¹ <https://angel.co/tickengo>

InstantCab

InstantCab is an app-based ridesharing company with its headquarters in San Francisco. Currently, InstantCab operates only in San Francisco.⁷² According to its website, InstantCab matches passengers with taxicab drivers as well as “community drivers” who have been vetted through the division of motor vehicle records and criminal background checks. Its drivers are required to carry “state-mandated insurance”, however it is unclear whether the requisite is for commercial or personal vehicle coverage. Passengers are required to pay fares through the use of a credit or debit card on file with InstantCab. A fare is determined by meter when a passenger is transported by taxicab. In instances where a passenger is transported by a “community driver,” a fare is “approximate” to what a meter would determine. A default gratuity of 20% is automatically applied to all fares, although a passenger can make an adjustment within five (5) minutes of the fare and gratuity being displayed on his/her Smartphone. To open an InstantCab account, passengers must install the InstantCab app on a Smartphone and possess a valid credit card or debit card.

RideScout

Austin-based technology start-up, RideScout, recently launched in the city with the support of local City Council members.⁷³ RideScout is a transportation application that connects riders with a range of ride service providers. The RideScout aggregation platform ranks ride convenience factors such as cost and time to recommend a “best ride” from all ride options available: public buses, transit, subway, taxis, limos, shuttles, car2go, pedicabs and “peer to peer” ridesharing. It then allows a user to choose the best on-demand ride. RideScout is targeting University of Texas students and downtown urban professionals as its first user groups.

During the South by Southwest Music Festival in March 2013 (“SXSW”), the RideScout app offered festival goers multiple ride options in one simple user interface including bus/rail, pedicabs, and low-speed electric vehicle cabs. Additionally, to start getting the word out about the app and gauge initial response, Ride Scout offered free sponsored shuttle rides for users.

⁷² www.instantcab.com

⁷³ <http://www.mysanantonio.com/business/press-releases/article/RideScout-Announces-Launch-of-Transportation-4363524.php>

Avego

Avego is an app-based global ridesharing entity with headquarters in Kinsale, Ireland.⁷⁴ Currently, Avego has U.S. offices in Washington, D.C. and Silicon Valley, California, and represents that it operates across the U.S.⁷⁵ Avego uses real-time technology to pair drivers and passengers who are traveling along the same route(s). Drivers and passengers must download Avego's ridesharing app and register before using its service. Avego pre-determines the cost of a trip⁷⁶ based on an unknown metric, and facilitates a credit card payment from the passenger to a driver once the passenger is dropped off. Drivers are not required to carry any insurance beyond that which is state-mandated for non-commercial use.⁷⁷

PickupPal

PickupPal is an internet/app-based global ridesharing company with headquarters in Barbados, West Indies.⁷⁸ In the U.S., PickupPal operates in all 50 states and the District of Columbia. PickupPal matches drivers with passengers who are traveling "the same way."⁷⁹ It is unknown whether PickupPal drivers operating within the U.S. are required to carry insurance beyond state-mandated coverage. PickupPal represents that its service is free of charge. Drivers determine and propose fares to passengers. If the passenger agrees to a proposed fare, the passenger pays the driver in cash at the end of the ride.⁸⁰ To open a PickupPal account, one can either apply through PickupPal's website or a smartphone app.

In 2008, a lawsuit was brought against PickupPal alleging its ridesharing operation violated Ontario's Public Vehicle Act and Motor Vehicle Act.⁸¹ The Ontario Highway Transportation Board (OHTB), responsible for hearing the lawsuit, agreed and among other things, forced PickupPal to comply with Ontario's carpooling rules.⁸²

⁷⁴ <https://rtr.avego.com/rtr-desktop-web/>

⁷⁵ <https://rtr.avego.com/rtr-desktop-web/>

⁷⁶ Passengers are generally charged .30 cents per mile. <http://gigaom.com/2008/09/08/mapflow-launches-sharelift-for-carsharing-20/>

⁷⁷ <https://www.avego.com/2013/05/01/does-ride-sharing-affect-my-insurance/>

⁷⁸ <http://www.pickupal.com/pup/intro.html>

⁷⁹ <http://www.pickupal.com/pup/intro.html>

⁸⁰ <http://www.pickupal.com/pup/howitworks.html>

⁸¹ http://www.blogto.com/environment/2008/11/carpooling_illegal_pickupal_learns_the_hard_way/

⁸² http://www.pickupal.com/save/blog/res/doc_092914.pdf

Uber Technologies, Inc.

Uber is a San Francisco-based app company. Uber directly connects passengers with Uber drivers in about 16 North American cities including Washington DC, Chicago, San Francisco, Seattle, and Denver. The Uber limousine service is being sued in several jurisdictions for illegally operating as a taxi service.⁸³ Uber also has a taxicab operation that directly connects Uber passengers with Uber taxi drivers in about five North American cities, including Chicago.⁸⁴ Uber circumvents regulated taxi dispatch systems and charges its limousine customers based on the company's uncertified smartphone meter.⁸⁵ In February 2013, Uber began partnering with drivers to officially launch its UberX service in California. UberX is the company's lower-cost option, which utilizes vehicles beyond Lincoln town cars, such as Toyota Prius Hybrids and SUVs.⁸⁶ An UberX ride will cost around 40 percent less than Uber black cars, starting at a base fare of \$5.00 with a minimum fare of \$10.00.⁸⁷

Indeed, the costs of fare for Uber trips fluctuates based on the type of service requested as well as customer demand, for which the latter has been referred to as "surge pricing."⁸⁸ Uber maintains a passenger/driver rating system that allows for either party to rate the trip based on any number of factors.⁸⁹ To open an Uber account, passengers must have a smartphone and credit card, and agree to indemnify Uber from any and all liability, including for gross negligence.⁹⁰

On April 12, 2013, Travis Kalanick, Founder and Chief Executive Officer of Uber, posted on Uber's website what he termed a "white paper" entitled "Principled Innovation: Addressing the Regulatory Ambiguity around Ridesharing Apps".⁹¹ In sum, Uber announces through this white paper that it intends to provide ridesharing services, through "UberX

⁸³ <http://www.xconomy.com/boston/2013/03/12/uber-sued-in-boston-case-could-wind-up-in-federal-court/>

⁸⁴ <https://www.uber.com/cities/chicago> [UBER TAXI – No flagging or yelling required! Use Uber to request and pay for a taxi, at standard taxi meter rates, plus a 20% gratuity automatically added for the driver.]

⁸⁵ <http://blog.uber.com/wp-content/uploads/2012/08/Div-of-Standards-Decision-re-Uber0-1-1.pdf>;

<http://www.mass.gov/ocabr/docs/dos/massachusetts-gives-green-light-for-uber-technologies.pdf>

⁸⁶ <http://techcrunch.com/2012/07/01/uber-opens-up-platform-to-non-limo-vehicles-with-uber-x-service-will-be-35-less-expensive/>

⁸⁷ <http://bostinno.com/2013/02/25/uberx-uber-car-service-launches-uberx-in-boston/>

⁸⁸ <http://blog.uber.com/2012/12/28/surge2012/>

⁸⁹ <http://thenextweb.com/insider/2012/04/13/in-case-you-didnt-know-uber-drivers-see-how-many-stars-you-gave-them/>;

<http://www.economist.com/blogs/babbage/2012/06/technology-and-taxis>

⁹⁰ See attachment below.

⁹¹ <http://blog.uber.com/2013/04/12/uber-policy-white-paper-1-0/>

Rideshare”⁹², in jurisdictions where it is currently operating, and where regulators have not stopped “ridesharing companies” like Lyft, SideCar and other similar operations – which is referred to as “tacit approval” of such operations by regulators. According to Mr. Kalanick, the purpose of the white paper is stated to be: (i) to provide recommendations to policy makers to promote innovation in transportation services while ensuring the safety of the public; (ii) to introduce a principled approach to ridesharing, given the regulatory complexities; and (iii) to envision what the law and/or regulatory framework could look like for ridesharing. Uber claims to enforce stricter background checks for ridesharing drivers than what is required by “any existing local regulatory body” and, claims to maintain a \$2,000,000 insurance policy applicable to ridesharing trips.

Ridesharing apps are proliferating at an increasing pace throughout the U.S. As such, many regulators have undertaken to determine whether such app companies, and the services they provide, meet existing definitions for transportation services (be it rideshare or for-hire transportation), and identify the major issues that are presented by these new operators. Below we have summarized some of the major issues that are currently being debated among local transportation authorities with respect to new ridesharing app companies.

Regulatory Issues

A. Does Ridesharing Require a Predetermined Route?

As discussed previously herein, the concept of traditional ridesharing has involved persons sharing a vehicle to reach a common destination, in which case, the trip is incidental to the driver who was already en route to a given location. Alternatively, even if the trip is not one that the driver was intending to make on his/her own accord, the route for the trip itself is designated in advance. Passengers will enter a traditional rideshare vehicle at a specified location knowing that it is only making designated stops to a pre-identified and common location that is accepted by the group, in advance.

⁹² http://www.nbcnews.com/id/51525488/ns/technology_and_science-tech_and_gadgets/t/uber-expand-private-ride-sharing-service-major-us-cities/#.UZuyndgUNn4

The advent of “ridesharing apps” have allowed for rideshare passengers and drivers to connect in real-time, which has also allowed for specific trips to be planned on an *ad hoc* basis (“*ad hoc* ridesharing trips”). “Rideshare” apps allow passengers to designate particular pick-up and drop-off locations, much like dispatchers of traditional taxicabs and/or other livery and for-hire vehicles. Some have criticized this feature of modern ridesharing as veering too far into the model of ground transportation operations. However, proponents of the *ad hoc* ridesharing trips believe that they are simply an outgrowth of the instantaneous, on-demand culture brought about by new technology, such as apps and social networking platforms, making ridesharing more appealing to potential users.

B. Should Compensation to Drivers be Permitted?

One of the most contentious issues presented by the advent of the new “ridesharing” apps are whether they are indeed, providing traditional ridesharing services; a free service that is provided for societal benefits, rather than for-profit or compensation. Some consider payments to drivers as just another useful incentive used to promote ridesharing, like preferential parking and/or the use of HOV/carpool lanes for rideshare vehicles. However, the competing view, is that when money is exchanged for services, rather than non-monetary benefits, the motive behind providing such services becomes for-profit and, as such, the service itself becomes a for-profit enterprise.

Proponents of compensation for drivers of rideshare vehicles (and for purposes of this paper, we will refer to such business models as a “compensation rideshare”), can be classified into two groups. The first, take the position that there are no legal or social harms associated with passengers donating to drivers and/or for a ridesharing app company to pay drivers money to provide ridesharing services (“Group 1”). Group 1 believes that no limit should be imposed on the amount of driver compensation to the monies that could be earned by such drivers (“Group 1”). The second group does not take issue with compensation to drivers *per se*, but argues that amounts collected must be capped at the recoupment of costs associated with providing such ridesharing services so that drivers are not making a “profit”, and such services cannot be considered commercial or for-profit (“Group 2”).

Proponents of Group 1’s point of view generally rely on the argument that the most important factor to achieving success in ridesharing is by having a critical mass of users, such

that a person who desires a ride at any given time can be quickly and efficiently matched with a driver. As such, a mechanism through which riders can share expenses by offering a donation to drivers is viewed as essential to the supply of compensation rideshare users in general (riders and drivers). Moreover, to the extent that a company wants to further incentivize people to sign-up to participate in ridesharing by offering a payment for trips taken, the idea is that such efforts only help to promote ridesharing services and expand the user-base.

Group 2, on the other hand, are more moderate in their approach to compensation rideshare, seeking to merely compensate drivers for the expenses associated with providing such services. For example, under the California State Insurance Code⁹³, vehicles engaged in “personal vehicle sharing programs”, (defined as a business of facilitating the *sharing* of private passenger vehicles for noncommercial use by individuals within the state), are not considered commercial vehicles, for-hire vehicles, or liveries for purposes of for-hire vehicle insurance requirements, and drivers may collect revenue so long as such annual revenue does not exceed the annual expenses of owning and operating the vehicle.

Additionally, in the California Order to Institute Rulemaking to address “new online enabled transportation services”⁹⁴, the “rideshare” app Tickengo, proposed that drivers who contract with the company to provide compensation rideshare through the app, should be able to accept monies from passengers, so long as the total annual amount collected does not exceed the annual cost of vehicle ownership as determined by the Automobile Association of America (“AAA”). At present, AAA has adopted an annual index of vehicle ownership costs of \$8,776.00 per year, which is based upon an assumption of 15,000 personal miles driven.

However, opponents of compensation rideshare argue that once money is exchanged in any amount, the ridesharing itself evolves from a not-for-profit operation, to one that is for-profit/for-hire, subject to for-hire transportation rules and regulations. For-hire transportation operators are subject to several rules that make them accountable to the government and public to provide safe, reliable, and nondiscriminatory services. For example, in California, the seating capacity of a for-hire vehicle determines the level of liability insurance and property damage insurance required to be maintained under the State regulations.⁹⁵ There are additional for-hire

⁹³ Cal. Ins. Code § 11580.24.

⁹⁴ Discussed in detail *infra*.

⁹⁵ For example, for a Class C charter-party carrier certificate, the following minimum liability insurance requirements apply (based on vehicle seating capacity, not including the driver): 7 passengers or less - \$750,000;

driver registrations that must be obtained separate and apart from obtaining the basic state driver's license⁹⁶ including enrolling in the DMV Employer Pull Notice Program (which provides employers and regulatory agencies with a means of promoting driver safety through ongoing review of driver records), and undergoing a drug testing program. While government-mandated requirements may be burdensome and costly, for for-hire vehicle operators, they are intended to protect the very passengers who pay for the for-hire service. For-hire vehicle operators must comply with such requirements if they wish to engage in the business of for-hire transportation.

Even in the case of government-overseen rideshare programs which allow for drivers to receive a nominal compensation, such as the California vehicle sharing program, the participants are required to (i) maintain, *inter alia*, liability coverage of no less than three (3) times the minimum insurance requirements for private passenger vehicles; (ii) provide detailed trip sheets to regulatory agencies and insurance companies; and (iii) they are required to assume the defense of the vehicle owner if an accident occurs while someone was driving pursuant to the personal vehicle program, even if there is a dispute about who was driving at the time.⁹⁷

Indeed, with respect to the goal of incentivizing drivers to participate in ridesharing through compensation, opponents note that remuneration for “ridesharing” app companies should not also subsidize the 15,000 personal miles that are assumed by AAA to calculate vehicle expenses. If a company requires a financial incentive to operate a ridesharing app, by definition it becomes a for-profit enterprise. Further, if the vehicle is driven additional miles, in excess of 15,000, while providing compensation rideshare services, the measure of profit should be the cost of those additional miles. If the same mileage assumption is used for compensation rideshare, these “ridesharing” vehicles would be given carte blanche to drive any number of miles per week which, opponents to compensation rideshare assert, is not the incidental or common trip that is contemplated under a traditional rideshare.

The main gripe of opponents to compensation rideshare is that there is a significant competitive advantage over existing for-hire transportation operators that is gained by providers of compensation rideshare, be them app providers and/or independent drivers. Opponents argue

8 through 15 passengers - \$1,500,000; 16 passengers or more - \$5,000,000. See <http://www.cpuc.ca.gov/PUC/transportation/FAQs/psgfaqs.htm>.

⁹⁶ See Title 13 of the California Code of Regulations for requirements.

⁹⁷ *Id.*

that this competitive advantage not only threatens the safety of the public (because there is no way to track such providers) but also negatively impacts consumer protection because drivers and, app providers motivated by profit, will seek an increase in quantity of rides, over quality of rides. Moreover, the compensation rideshare moves ridesharing into the for-profit space which necessarily extends it too far beyond activity that is traditionally considered a rideshare.

C. Registration of Companies that “Coordinate” Ridesharing

Another proposal that is being discussed amongst regulators is to hold companies that coordinate and/or broker ridesharing services should be accountable to local transportation agencies in some way, even if the services do not involve a compensation rideshare. Some suggest that local transportation authorities may better monitor the provision of rideshare services and its impact on traffic, environmental and transportation access issues, by requesting that companies that connect passengers to drivers providing traditional ridesharing services (that is, services provided for free/no compensation), register with the local transportation agency. Regulators may then audit such companies for information about how many rideshare trips were coordinated in a designated period of time, and how many people were serviced, etc. Such information can be used as a measuring tool to determine the effectiveness of ridesharing in obtaining societal benefits, while also allowing for local authorities to ensure that true ridesharing services are being provided, rather than for-hire transportation services.

The counter argument to the registry proposal is that the government does not have a right to such information unless the companies fall within the jurisdiction of the local government in some capacity (i.e., providing for-hire transportation service, interstate commerce, commercial ground transportation or receiving a benefit from the government for ridesharing services). To the extent that a company coordinates traditional ridesharing, the business model is not-for-profit and therefore not subject to the unnecessary and additional oversight of the local transportation authorities. The response given to such resistance, however, is that as the ridesharing movement continues to grow, measuring its impact will become increasingly important. Indeed, local government will surely consider whether the additional costs required to maintain such a registry is worth the eventual benefit of monitoring ridesharing services, evaluating its effectiveness, and ensuring that such services do not tread on the for-hire transportation industry.

D. Airport Issues

In March 2013, San Francisco International Airport (“SFO”) issued cease and desist letters to SideCar; Lyft; Tickengo and Uber for providing for-hire vehicle service at the airport without the proper permit from the SFO.⁹⁸ In addition, FlightCar, a recently launched startup that enables owners to rent vehicles to pre-screened drivers, was also issued a cease and desist letter by SFO. According to reports, SFO is the only airport to take action against ridesharing companies to date.

As required by most other U.S. airports, for-hire vehicles licensed to operate in California and San Francisco must still obtain the approval of the SFO to provide commercial ground transportation at the airport.⁹⁹ At SFO, for-hire vehicles are also subject to additional SFO permit requirements including *inter alia*, having a transponder installed (a small computer chip that records all trips made into and out of the airport) and proper decals evidencing SFO authority; posting a performance bond to guarantee payment of certain registration and inspection fees; and the submission of a certificate of insurance issued by the insured’s broker or insurance company, which lists the SFO as an additional insured.¹⁰⁰ Moreover, advanced reservations are required for a limousine to pick-up a passenger from the SFO, and limousine operators are not authorized to solicit customers at the terminal building.¹⁰¹

In connection with the cease and desist letters issued by SFO to the aforementioned app companies, an SFO spokesperson said the airport sees the permitting issue as a matter of safety and fairness, “[t]here are 44 million people traveling through SFO annually, there is limited road space and the plethora of existing transportation alternatives, including ridesharing, have permits.”

In addition to the safety and fairness issues, which also trouble state and local regulatory bodies, airports are faced with other issues arising from unlicensed, unpermitted ridesharing

⁹⁸ <http://www.bizjournals.com/sanfrancisco/blog/2013/04/san-francisco-international-airport.html?page=all>

⁹⁹ <https://sfoconnect.com/gtu/permit/steps?type=Limousine&action=New>. The SFO application is accessible on the SFO Ground Transportation Unit’s website.

¹⁰⁰ <https://sfoconnect.com/gtu/permit/fee-schedules/annual-registration>

It should also be noted that the SFO follows the insurance guidelines provided by the Commission. In addition to the insurance certificate, any company providing transportation services to/from SFO must also provide a fleet schedule; worker’s compensation insurance certificate; a satisfactory California Highway Patrol Terminal Safety Inspection Report (or, for out of state operators, an inspection report from their state); copy of articles of incorporation if the company is a corporation; copy of the Statement of Information filed with the Secretary of State; and a valid commercial registration with a livery plate for each limousine .

¹⁰¹ See generally <http://www.flysfo.com/web/page/tofrom/transp-serv/limo/>

companies providing ground transportation to airport customers. For example, many airports enter into concession agreements with ground transportation companies which are awarded to those companies through a public bidding process.¹⁰² The agreements often contain exclusive or semi-exclusive use provisions as to the approved ground transportation providers.¹⁰³ In exchange for the exclusive or semi-exclusive privilege, the ground transportation company is required to pay a fee to the airport.¹⁰⁴ Ridesharing companies sidestep the ground transportation framework currently utilized by many airports across the country and infringe upon the rights of those ground transportation companies who have been awarded the privilege of operating at the airport.

E. Proper Worker Classification Status of Drivers

Many licensed for hire vehicle operators invest much time and legal resources on the issue of how to properly classify their for hire drivers under state and federal labor law. However, ridesharing app companies that solicit and hire drivers to provide transportation services through their app(s), may be creating a relationship between their companies and their affiliated drivers which do not comport with legal standards for the independent contractor worker classification category. Most for hire vehicle drivers are classified as independent contractors, a status which is important under federal, state and local tax and labor laws. Worker classification has become a particularly important topic recently as the Internal Revenue Service (“IRS”) has stepped-up enforcement of rules regarding independent contractors. This increased enforcement has been facilitated by the formation of joint task forces among the Federal Department of Treasury and the Department of Labor (“DOL”), as well as between state agencies, to crack down on independent contractor misclassification.¹⁰⁵ In addition to criminal and civil actions initiated by the government, there are also private causes of action that can be instituted under the Fair Labor Standards Act¹⁰⁶ and equivalent state laws for overtime back-pay

¹⁰² TCRP Report 83, Chapter 5, Strategies for Improving the Management of Airport Ground Access Services, http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_83a.pdf

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ See U.S. Department of Labor Strategic Plan at pg. 31, available at http://www.dol.gov/_sec/stratplan/StrategicPlan.pdf.

¹⁰⁶ See The Fair Labor Standards Act of 1938 (“FLSA”), as amended, 29 U.S.C. § 201, *et seq.*, available at <http://www.dol.gov/whd/flsa/>.

Notable cases regarding worker misclassification under the FLSA include a federal class action lawsuit brought in California against UPS which settled for \$12.8 million in December 2009; ongoing litigation against FedEx in 28 states over the misclassification of drivers for which total financial penalties could reach upwards of \$1 billion; and

resulting from improper worker classification, which may be commenced by groups of workers in the form of a class action involving significant liability exposure.

The IRS defines an “independent contractor” as an individual that has the right to control or direct the result of the work performed.¹⁰⁷ Independent contractors are paid in accordance with the contract between the contractor and the employer. In contrast, an employee is entitled to minimum wage and overtime payments in accordance with state and federal law, and companies are required to pay federal and also state employment taxes for that worker. While tests for assessing worker status vary among governmental agencies, in general, the more control a company has over the manner and means by which a worker performs his services, the more likely the worker will be considered an employee.

Across the nation, ridesharing app companies are hiring drivers to provide transportation services through their apps, but it is unclear how such drivers are being classified.¹⁰⁸ SideCar states that some drivers who receive more than \$600 in “driver credits” – which includes “shift payments”, “consulting fees”, “marketing fees”, and other earnings outside of donations – will be issued an IRS 1099 tax form, which indicates the driver is an independent contractor.¹⁰⁹ However, all other drivers do not receive 1099 forms, and if a driver makes more than the total annual operating cost of his/her vehicle, SideCar advises the driver to consult a tax advisor.¹¹⁰ One may assume that drivers working as SideCar “brand ambassadors” (e.g., in Philadelphia and Austin), may be issued 1099 forms since they are paid an hourly wage outside of donations, however, it is unclear how drivers are being directed to report such income.

A recent article on www.buzzfeed.com, is authored by a man who applied for and was hired for the position of a Lyft driver.¹¹¹ He illuminates for the public, amongst other things, the

a pending \$200 million federal class action lawsuit brought in July 2009 against Northwestern Mutual alleging minimum wage violations and failure to pay overtime. See Worker Misclassification: Recent Trends in Independent Contractor Lawsuits, available at <http://media.straftfordpub.com/products/worker-misclassification-recent-trends-in-independent-contractor-lawsuits-2010-04-27/presentation.pdf>.

¹⁰⁷ See Independent Contractor Defined, available at <http://www.irs.gov/businesses/small/article/0,,id=179115,00.html>.

¹⁰⁸ See e.g., <http://thebillfold.com/2013/02/i-give-strangers-rides-they-give-me-money/>

¹⁰⁹ <https://sidecar.desk.com/customer/portal/articles/924061-taxes>

¹¹⁰ *Id.*

¹¹¹ <http://www.buzzfeed.com/justinesharrock/life-behind-the-wheel-in-the-new-rideshare-economy>. A similar expose' on SideCar and Lyft is featured in the article “100,000 Uninsured Rides and Counting” by Ed Healy, author of The Phantom Cab Driver Phites Back. Article available at <http://www.taxi-library.org/cpuc-2013/ed-healy.pdf>. Phantom Cab Driver Blog available at <http://phantomcabdriverphites.blogspot.com/>. Mr. Healy is also a party to the California OIR proceeding, and submitted therein on January 28, 2013 and February 12, 2013, available at <http://delaps1.cpuc.ca.gov/CPUCProceedingLookup/f?p=401:1:1678185058870401:::>

business relationship between Lyft and its drivers.¹¹² Lyft drivers reportedly sign up for work hours on-line and are provided with W-9 tax forms.¹¹³ Once a drivers signs-up for a shift, drivers are expected to keep the app on in order to receive trips.¹¹⁴ If a driver cannot respond to the app, or needs a break, the driver is required to turn off the app in “driver mode” so that the company does not deduct points for reliability because a trip request went unanswered.¹¹⁵ Lyft allows drivers to take 15% of their time on shift as breaks before it starts to affect the drivers’ reliability rating.¹¹⁶ The California Labor Code requires that employers give employees who work a period of more than five (5) hours per day a meal period of not less than 30 minutes.¹¹⁷ Further, California Wage Order No. 5, subdivision 12(A) provides in relevant part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.”¹¹⁸

With respect to other labor questions related to worker classification and tax status, Lyft reportedly directs drivers to a fellow driver/tax accountant, who advises drivers as follows:

Calling a voluntary payment for service received a donation does not affect whether its taxable unless the receiver is a tax-exempt organization . . . so all of your Lyft income is taxable since you are not a tax-exempt organization.¹¹⁹

Lyft sends its drivers their total number of Lyfts once a year, as well as the amount of donations they have received over the past year, and, if they have earned more than \$20,000 in donations, a 1099K form is provided.

Recently, in March 2013, San Francisco drivers for Uber went on strike against the company demanding, *inter alia*, clarity on the issue of classification and wages. Thirty (30) town car drivers protested in front of Uber’s San Francisco headquarters demanding a better contract. A spokesperson for the drivers said that before, they were considered “partners”, but have not been consulted about recent changes, such as the lowering of the 10 percent cancellation fee. Drivers also accuse Uber of slowly cutting professional town car drivers out of their business model, always taking the passenger’s side in disputes, firing drivers en masse, and

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Ca Labor Code § 512(a). However, it should also be noted that the meal break requirement does not apply to “commercial drivers”. See Ca Labor Code § 512(f).

¹¹⁸ *Brinker Restaurant Corp. v. Superior Court*, 273 P.3d 513, 530 (Cal. 2012).

¹¹⁹ *Id.* (internal quotations omitted).

lowering driver pay.¹²⁰ The drivers who made an appearance at the protest outside of Uber headquarters said they would like to unionize.¹²¹ The drivers are also incensed at Uber for allowing non-commercial drivers to apply for driving jobs under the UberX model.¹²²

In response to the protest, Uber issued the following statement, but did not address the wage issue:

Uber is 100 percent committed to working with only the highest quality transportation providers, thousands of whom are using Uber to grow their businesses and provide quick and reliable service to San Franciscans. Drivers who don't know the city well or who are unsafe or unprofessional ultimately receive consistently negative feedback from riders that we cannot ignore.

Failing to address the worker classification issues may subject ridesharing app companies to government investigations and audits on the state and federal level and among a number of different agencies, including the IRS and the DOL. To the extent that drivers for rideshare app companies are being misclassified, the liability exposure is massive including the issuance of government penalties, civil causes of action as well as even criminal causes of action. Further, as discussed below, whether a driver is an independent contractor or employee of an app company plays a role in whether a company's insurance coverage will protect said driver if an accident occurs while providing transportation services through the app.

F. Insurance Issues

Another major issue presented by ridesharing apps is whether the personal vehicle coverage policies that are maintained by regular, non-commercial drivers, would extend to cover trips made under a compensation rideshare. In general, most auto insurance companies cover a vehicle used in an ordinary carpool on a ridesharing or cost sharing basis. As such, trips made under a traditional rideshare concept would be covered as there is no money being exchanged, and therefore no "commercial" or "for-hire" element introduced. Nevertheless, for many for-hire

¹²⁰ <http://thenextweb.com/insider/2013/03/16/striking-uber-drivers-plan-on-not-answering-calls-for-rides-on-st-patricks-day-in-san-francisco/?fromcat=all>

¹²¹ <http://thenextweb.com/insider/2013/03/16/striking-uber-drivers-plan-on-not-answering-calls-for-rides-on-st-patricks-day-in-san-francisco/?fromcat=all>

¹²² <http://thenextweb.com/insider/2013/03/16/striking-uber-drivers-plan-on-not-answering-calls-for-rides-on-st-patricks-day-in-san-francisco/?fromcat=all>

transportation operators, one of the most significant and costly requirements of their business is maintaining the state-mandated insurance coverage requirements.

Both Lyft and SideCar advertise that they have excess liability insurance up to \$1,000,000 per occurrence.¹²³ Lyft claims to be the first of the “ridesharing” apps to provide free excess liability protection over a driver’s existing insurance while they are transporting Lyft passengers on a trip arranged through the Lyft app.¹²⁴ Lyft drivers are required to maintain personal automobile insurance as required by state law, in addition to other “community requirements” listed in Lyft’s terms of service.¹²⁵ In turn, SideCar’s \$1,000,000 excess liability insurance coverage is for California drivers, only.¹²⁶ SideCar also has a \$1,000,000 Guarantee Program for drivers in other states.¹²⁷ SideCar’s website states that the Guarantee provides protection for up to \$1,000,000 in damages for covered losses in the event of an accident. The payments are subject to certain conditions, limitations and exclusions, the details of which can be found in SideCar’s “Program Terms”, which is only available from SideCar upon request. Under the Guarantee program, drivers must complete an accident notification form within two (2) business days of the accident and copy SideCar on any claims and correspondence. The Guarantee is not insurance and drivers are advised not to consider it as a replacement or stand-in for primary automobile insurance.

Naturally, it is the policy exclusions, limitations and conditions which are of concern to regulators and the public. Many regulators are concerned that if the very basic scenario of a car accident occurs during the course of a compensation rideshare trip that was booked through a ridesharing app, all parties involved (*e.g.*, rideshare driver/passenger and/or a third-party injured or property that is damaged) may not receive proper coverage for damages suffered. Moreover, it is unclear how drivers are being classified on such policies – are they employees of the ridesharing app companies or independent contractors? These issues also impact whether a trip is considered the ordinary course of business of the driver, and whether an accident that may occur during such a trip would be covered by the ridesharing app company’s commercial policy. The Personal Insurance Federation of CA (“PIFC”), is the first insurance trade association to

¹²³ <http://blog.lyft.me/post/30998195495/1m-lyft-protection>; *see also* http://www.side.cr/driver_guarantee

¹²⁴ <http://blog.lyft.me/post/30998195495/1m-lyft-protection>

¹²⁵ <http://blog.lyft.me/post/30998195495/1m-lyft-protection>

¹²⁶ http://www.side.cr/driver_guarantee

¹²⁷ http://www.side.cr/driver_guarantee

make a public statement addressing the issue of coverage when it comes to ridesharing app companies and the transportation services they offer.

The PIFC, which represents six (6) of the largest insurance companies in the U.S.¹²⁸, and which collectively, insure the majority of personal automobiles in California, submitted comments to the CA OIR which explained the position of its members on the subject:

It appears that the industry standard for personal auto insurance ... is to exempt from insurance coverage claims involving vehicles used for transporting passengers for a charge. Thus, in situations where a vehicle is insured as a private vehicle and is used to transport passengers for a fee, no insurance coverage would exist The issue before the CPUC is not ridesharing, but instead using a private passenger vehicle in a livery service. This is clearly *not* covered under a standard policy; if an accident occurs, coverage would not exist.

(Emphasis added).¹²⁹

Thus, in light of the PIFC's statement, the question is which insurance companies have provided SideCar and/or Lyft the \$1,000,000 coverage they publicize, and on what conditions. The administrative law judge assigned to the OIR has requested that SideCar, Lyft, Uber, Tickengo and InstantCab (all of which are parties to the OIR proceeding), produce, under seal, by May 31, 2013, copies of all insurance policies for the years 2012 and 2013. Although not available to the public, the interested parties may be able to glean the contents of such policies from future rulings in the OIR.

Overview of Jurisdictions Currently Addressing Ridesharing

All over the country, regulators are wrestling with the above-mentioned issues, and others, in an effort to properly classify the ridesharing apps that have aggressively expanded across the U.S. California, the birth place of many of the ridesharing apps, has been in the forefront of this discussion. In addition, ridesharing apps have proliferated to New York City; Washington, DC; Philadelphia, Pennsylvania; Boston, Massachusetts; Seattle, Washington; Chicago, Illinois; and Austin, Texas. Each of these jurisdictions are reviewing their existing regulations to determine whether ridesharing apps are in tension with their current regulatory framework, whether rulemaking is necessary or if it is just a matter of increasing enforcement of

¹²⁸ The members of PIFC include State Farm, Farmer's, Progressive, All State, Liberty Mutual and Mercury Insurance Group. <http://www.pifc.org/>

¹²⁹ See PIFC's Comments filed on January 28, 2013 in OIR, Docket # 1212011, Available at <http://delaps1.cpuc.ca.gov/CPUCProceedingLookup/f?p=401:1:0>

existing rules. Below we have summarized current activity in the aforementioned jurisdictions, with respect to ridesharing apps.

California

(a) *Regulatory Framework*

The California State Public Utilities Commission (the “CPUC”) has regulatory and safety oversight over for-hire passenger carriers (i.e., limousines, airport shuttles, charter and scheduled bus operators) used in the transportation of passengers for-hire on a prearranged basis within California (the “State”).¹³⁰ The CPUC enforces the “Passenger Charter-party Carriers’ Act”, California Public Utilities Code §§ 5351, *et seq.* Motor vehicles operating in California are also subject to the California Vehicle Code §§ 1- 42277 and the California Insurance Code §§ 1- 16032.

On the other hand, City regulatory bodies, such as the San Francisco Municipal Transportation Agency (“SFMTA”) and the Los Angeles Department of Transportation (“LADOT”), are responsible for the regulation of taxicabs. Furthermore, California law affords the City authority to regulate intracity for-hire transportation service, including *inter alia*, livery and/or limousine service.¹³¹ To meet this exemption from CPUC regulation, all (100%) of the transportation of the service provided must meet the exemption, and no portion of transportation service provided may be outside of the City. The City of San Francisco does not have processes in place at present to regulate such intracity limousine/livery service. The City of LA has issued a small number of vehicle-for-hire permits for sedans and limousines operating exclusively in the City, which belong to car dealerships, grocery stores and hotels.

The CPUC views limousines as providing charter-party carrier (“TCP”) service to passengers.¹³² TCP service is transportation chartered by a party who may arrange for transportation on behalf of another person or group.¹³³ The TCP has control over the transportation, when and where the transportation originates and ends, and the itinerary in

¹³⁰ *Id.*

¹³¹ <http://www.cpuc.ca.gov/NR/rdonlyres/42294D2B-412E-466E-A74B-F1862BFC6924/0/PassengerCarriersBasicInfoandApplicantsRev012811.pdf>

¹³² Passenger stage corporations and private carriers must also obtain CPUC authority; however, based upon the facts presented, Lyft or SideCar’s contemplated service does not qualify either of them as a passenger state corporation or private carrier, and therefore these types of passenger authority are not discussed herein.

¹³³ <http://www.cpuc.ca.gov/NR/rdonlyres/42294D2B-412E-466E-A74B-F1862BFC6924/0/PassengerCarriersBasicInfoandApplicantsRev012811.pdf>

between.¹³⁴ TCPs must charge fares based on vehicle mileage, or time of use, or a combination of the two, and may not charge individual fares.¹³⁵ The prohibition against charging “individual fares” simply means that the driver cannot charge “per person,” and that fares must be based on mileage or time of use, or a function of both.¹³⁶

(b) *Ridesharing Exemptions*

Ridesharing is defined under the California Vehicle Code as “two or more persons traveling by any mode, including, but not limited to, carpooling, vanpooling, buspooling, taxipooling, jitney, and public transit.”¹³⁷ Rideshare transportation is exempt from CPUC authority when it involves the transportation of persons between home and work locations or of persons having a common work-related trip, when ridesharing is incidental to another purpose of the driver.¹³⁸ The CPUC is clear in noting that this exemption does not apply if the primary purpose for the transportation is to make a profit.¹³⁹ While the CPUC also exempts passenger vehicles carrying passengers on a “noncommercial enterprise basis,”¹⁴⁰ this term is not defined by the CPUC. Therefore, it is unclear whether a ridesharing program would qualify under the “noncommercial enterprise” exception.

California also has a vehicle sharing program which affords a very narrow exemption for private passenger vehicles engaged in “vehicle sharing” from being classified as commercial vehicles, for-hire vehicles, permissive use vehicles, or liveries.¹⁴¹ An insurance company cannot deny coverage to a vehicle engaged in vehicle sharing so long as, *inter alia*, the annual revenue received by the vehicle’s owner which was generated by the personal vehicle sharing does not exceed the annual expenses of owning and operating the vehicle; the vehicle owner maintains liability insurance coverage no less than three (3) times the minimum requirements for private passenger vehicles; maintains verifiable electronic records that identify details of trips (“trip sheet data”); and so long as the owner does not permit the vehicle to be operated for

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Confirmed in conversation with CPUC official.

¹³⁷ See Ca. Vehicle Code § 522.

¹³⁸ See Public Utilities Code § 5353(h).

¹³⁹ <http://www.cpuc.ca.gov/NR/rdonlyres/42294D2B-412E-466E-A74B-F1862BFC6924/0/PassengerCarriersBasicInfoandApplicantsRev012811.pdf>

¹⁴⁰ Public Utilities Code § 5353(f).

¹⁴¹ See Cal. Ins. Code § 11580.24.

commercial use.¹⁴² A “Personal Vehicle Sharing Program” is defined as a legal entity qualified to do business in the State of California engaged in the business of facilitating the sharing of private passenger vehicles for noncommercial use by individuals within the state, and generally involves vehicles that sign-up with a corporation to provide car sharing.¹⁴³ It is also important to note that the personal vehicle sharing program does not involve personal vehicles being offered with an operator.¹⁴⁴

(c) *How is California addressing Ridesharing Apps?*

In December 2012, in an effort to address the many safety and regulatory concerns arising from the business operations of like Lyft, SideCar, Uber, and other similar app companies the CPUC issued an order to initiate a “quasi-legislative” rulemaking proceeding (“OIR”) to consider amending existing regulations and/or promulgating new regulations which relate to passenger carriers, ridesharing, and what the CPUC termed “new online-enabled transportation services”.¹⁴⁵

Shortly thereafter, in January 2013, the CPUC released a statement that said it had reached an agreement allowing Lyft to operate in the state under the oversight of the CPUC to ensure that Lyft adheres to safety requirements, like proof of insurance, national criminal background checks for drivers and Department of Motor Vehicle checks.¹⁴⁶ The CPUC also entered into a settlement agreement with Uber which, *inter alia*, prohibits Uber drivers from transporting passengers onto airport property unless licensed by said airport, and requires Uber to seek state certification of its GPS-enabled fare calculation device. The CPUC had previously fined Lyft, SideCar and Uber \$20,000 each, but it stated that the settlement agreements suspended its cease-and-desist order against Lyft and Uber. The CPUC’s cease-and-desists order and fines against SideCar remain active; however SideCar has continued its operations in the city anyway.¹⁴⁷

¹⁴² See Cal. Ins. Code § 11580.24.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵

http://www.cpuc.ca.gov/PUC/transportation/Passengers/CarrierInvestigations/CPUC_Proposes_to_Evaluate_Ridesharing_Services_Via_New_Proceeding.htm

¹⁴⁶ <http://bits.blogs.nytimes.com/2013/01/30/california-suspends-fine-against-lyft-a-hail-a-ride-app/>. It should be noted that Zimride is the company that operates Lyft. See <http://business.time.com/2012/09/04/need-a-lyft-ride-sharing-startup-zimride-hits-the-gas-pedal/>

¹⁴⁷ *Id.*

The California OIR is ongoing, but a proposed final decision is expected as early as July 2013. As such, only time will tell whether the CPUC will amend their existing definition for ridesharing to include the operations of SideCar, Lyft, Uber, Tickengo, InstantCab, and other similarly operating app companies.

Notwithstanding the CPUC's eventual determination, the position of the local jurisdictions with respect to these "ridesharing" app companies seems to be clear -- that their transportation operations are for-hire businesses and therefore, the app companies must obtain proper licensure. Both the SFMTA and the LADOT submitted comments to the CPUC OIR (respectively referred to herein as "SFMTA Comments" and LADOT Comments") which, in no uncertain terms, state that both local jurisdictions believe that the transportation operations of SideCar, Lyft, Uber and other similarly situated app companies do not meet the definition for ridesharing and instead, are rogue for-hire operations.¹⁴⁸

(i) San Francisco

The SFMTA believes that the aforementioned apps do not meet the current state definition for ridesharing because (i) the trips are not work related; (ii) they do not involve a trip that the driver was already intending to take ("incidental to the driver") and (iii) the actual compensation received is profit and not the cost of the trip. Because the SFMTA is a local agency that does not have the power to change state laws, it may only amend its rules in order to authorize, or prohibit this type of for-hire transportation service, which it is currently debating.

The SFMTA Comments submitted in the OIR indicate that they are very concerned about the operation of "ridesharing apps" in numerous respects, including, *inter alia*, that (i) there is no primary insurance because coverage is excluded for commercial vehicle use and there is no disclosure of secondary insurance to the public; (ii) the opportunity to earn money by using a private vehicle to provide for-hire transportation is encouraging non-professional drivers to take

It should be noted that the San Francisco Municipal Transportation Agency ("SFMTA") also issued the first cease-and-desist order against Uber in the U.S., claiming that it was operating an unlicensed taxicab service, and directing Uber from removing the word "cab" from its name. In response, the company complied and changed its name from UberCab to Uber. See <http://www.sfgate.com/bayarea/article/Putting-brakes-on-ride-sharing-apps-3927193.php>

¹⁴⁸ The SFMTA's and LADOT's comments were filed on January 28, 2013 with reply comments submitted on February 11, 2013. Both are available at [http://delaps1.cpuc.ca.gov/CPUCProceedingLookup/f?p=401:1:0, OIR Docket # 1212011](http://delaps1.cpuc.ca.gov/CPUCProceedingLookup/f?p=401:1:0,OIR Docket # 1212011). In addition to the aforementioned, the IATR, Taxicab, Limousine & Paratransit Association, as well as other trade organizations and advocates submitted comments as parties to the OIR. A copy of the complete service list may be found at <http://delaps1.cpuc.ca.gov/CPUCProceedingLookup/f?p=401:1:0, OIR Docket/Proceeding # 1212011>.

to the streets for cash, which increases collision risks to other vehicles, pedestrians and bicyclists because of increased traffic and inexperienced drivers; (iii) there is no vehicle inspection of personal vehicles used for for-hire transportation; (iv) increased emissions; (v) increased congestion on the roads and highways; (vi) negative impact on public transit; and (vii) the atmosphere of deregulation caused by these services is inviting road rage incidents and potentially violent conflicts between competing fleets of drivers.

(ii) Los Angeles

The LADOT is also in agreement that SideCar, Lyft and other similar apps are not providing ridesharing services under the state definition. The LADOT Comments to the OIR indicate that they consider these ridesharing apps as operating as “defacto taxicabs/illegal vehicles-for-hire by accepting electronic hails for service....” The LADOT Comments also encourage a tightening of the existing state definition for ridesharing by “[s]tating that to qualify for the exemption a company may not make any profit and/or accept any percentage of compensation as a result of the provision of such ridesharing services. This could best be accomplished by stipulating that no for-profit third party processing of donations is allowed for ridesharing.”

Moreover, the LADOT, as well as the SFMTA, believe that encouraging innovation is not a mission of the CPUC. Rather, the CPUC is responsible for pursuing regulations and enforcement of existing laws and assuring the public safety and accountability of transportation providers. The LADOT is concerned by the fact that the public may be transported in private, uninspected vehicles, driven by persons who have not undergone a thorough criminal history background check, DMV records check, substance abuse testing, and that passengers may be subject to opaque and possibly inaccurate fares based on GPS data calculations, that can be changed at-will.

As more fully elucidated above in the Airport Issues Section, San Francisco International Airport, a party to the OIR, seems to be in agreement with the SFMTA and LADOT as they have issued cease and desist letters to SideCar; Lyft; Tickengo and Uber for providing for-hire vehicle service at the airport without the proper permit from the SFO.

New York City

(a) *Regulatory Framework*

The New York City Taxi and Limousine Commission (“TLC”) is responsible for licensing and regulating taxicabs and for-hire vehicles in New York City. Chapter 5 of Title 19 of the New York City Administrative Code provides the laws which govern the transportation of passengers in New York City. Additionally, the TLC promulgates regulations governing the operations of for-hire vehicles (the “TLC Regulations”).

For-hire vehicles are defined as motor vehicles (which are not taxicabs, commuter vans, or an authorized bus as defined by New York law) licensed by the Commission to carry passengers for hire in New York City with a seating capacity of twenty people or less.¹⁴⁹ Under New York law, the owner of a for-hire vehicle must obtain a for-hire vehicle license.¹⁵⁰ There is no exception from these requirements for non-commercial enterprises or other similar programs.

Pursuant to Section 55-02 of the TLC Regulations, any person who does not hold a Valid License or Authorization from the Commission as a for-hire driver, for the for-hire vehicle or for the for-hire-service, is subject to fines, penalties and vehicle seizure.¹⁵¹

(b) *Ridesharing Not Defined*

Ridesharing is not defined under New York State or New York City’s laws. As a result, New York regulators may view the donations made by passengers to drivers as profits received for the driver’s service and view the ridesharing vehicle as a for-hire vehicle.

(c) *How is New York City Addressing Ridesharing Apps?*

On May 1, 2013, at *TechCrunch Disrupt*, Ashwini Chhabra, the Deputy Commissioner for Policy and Planning of the New York City Taxi and Limousine Commission (“TLC”) stated, “Categorically, we don’t oppose rideshare. What we oppose is a service that let’s people provide taxi service. You need to build in safeguards to make sure that this isn’t someone who is going to be doing 6, 10, 12 rides a day, because that’s what a car service does.”¹⁵² Several days before, the TLC reportedly stopped two SideCar drivers in the course of an enforcement operation.

¹⁴⁹ NYC Admin. Code, § 19-502(g); TLC Regulations § 51-03.

¹⁵⁰ NYC Admin. Code, § 19-504.

¹⁵¹ TLC Regulations Section § 55-02

¹⁵² <http://www.theverge.com/2013/5/1/4289464/sidecar-sting-operation-new-york-city-ridesharing>

Reports state that one of the SideCar drivers was released while the other was allegedly issued a citation and the driver's car was impounded.¹⁵³

The enforcement operation led to a TLC administrative hearing wherein the Court found that the cited SideCar driver operated an unlicensed for-hire vehicle.¹⁵⁴ The Court further held that even free rides would violate the City's law governing taxis and limousines and levied a \$1,500 fine that SideCar paid. Allan J. Fromberg, Deputy Commissioner for Public Affairs at the TLC reportedly stated, "This is an extremely simple issue. If you are acting as a taxi or car service, without the benefit of a license, the TLC will shut you down."¹⁵⁵ As result of the outcome of the TLC administrative hearing, SideCar is no longer operating in New York City.

Washington, DC

(a) *Regulatory Framework*

The District of Columbia Taxicab Commission (the "DCTC") regulates public vehicles for hire operating in the District of Columbia (the "District") pursuant to Title 31 of the DC Code of Municipal Regulations ("DCMR" or the "DC Regulations"). A Public Vehicle for Hire is defined as: (i) any passenger motor vehicle operated in the District by an individual or any entity that is used for the transportation of passengers for hire, including as a taxicab, limousine, or sedan; or (ii) any other private passenger motor vehicle that is used for the transportation of passengers for hire but is not operated on a schedule or between fixed termini and is operated exclusively in the District, or a vehicle licensed pursuant to D.C. Official Code § 47-2829, including taxicabs, limousines, and sedans.¹⁵⁶ A limousine is defined as a sedan vehicle, having a seating capacity of nine (9) or fewer passengers, exclusive of the driver, with three (3) or more doors, operated or offered as a vehicle for passenger transportation for hire, by contract fixed solely by the hour.¹⁵⁷ A taxicab is defined as a public vehicle for hire having a seating capacity for eight (8) or fewer passengers, exclusive of the driver, and operated or offered as a vehicle for passenger transportation for hire.¹⁵⁸ The District requires that any person driving a vehicle to

¹⁵³ *Id.*

¹⁵⁴ <http://blogs.wsj.com/venturecapital/2013/05/15/n-y-shutdowns-for-sidecar-relayrides-highlight-hurdles-for-car-and-ride-sharing-startups/>

¹⁵⁵ *Id.*

¹⁵⁶ *See* D.C.M.R. § 31-899

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

transport passengers for-hire over any portion of a route in the District must apply for a license.¹⁵⁹

(b) *Ridesharing Exemptions*

Although the term “ridesharing” is not explicitly mentioned in the D.C. Regulations, “shared riding” and “group riding” are addressed.¹⁶⁰ “Shared riding” involves trips arranged by one individual at a DCTC-designated shared ride venue – Union Station, the DC Convention Center, Nationals Ball Park and the Verizon Center - that involve the transportation of two or more passengers with common or different destinations. “Group riding” is the transportation of two or more passengers whose trip has a common point of origin and different destinations. Both shared and group riding use taxicabs as the method of transportation, not private passenger vehicles.¹⁶¹

As an extension of the shared/group ride, the District has had what are called “slug lines”, which refer to private car owners picking-up people who are going in their general direction during rush hours. The DC Department of Transportation put up slug line signs throughout the District; however the arrangements are not regulated.

(c) *How is DC Addressing Ridesharing Apps?*

SideCar launched its “ridesharing” services in DC on or about March 21, 2013, despite meeting with the D.C. Taxi Cab Commission (“DCTC”) and implying that the company did not plan on launching operations in the District. On April 12, 2013, the DCTC released a statement reflecting its intent to regulate the purported “ridesharing services” that they believe operate as for-hire vehicles.¹⁶² DCTC Chairman Linton stated that after conducting a review of ongoing and proposed ridesharing services, the Commission determined that these services and the drivers and vehicles associated with them, are public vehicle-for-hire services that must comply with District licensing laws and Commission regulations. The Chairman went on to state

¹⁵⁹ D.C. Official Code § 47-2829(b) requires that any person driving a vehicle to transport passengers for-hire over any portion of a route in the District must “submit to the Mayor, in triplicate, an application for license, stating therein the name of such person, [partnership, association, trust, or corporation], the number and kind of each type of vehicle to be used in such operation, the schedule or schedules and the total number of vehicle miles to be operated with such vehicles within the District of Columbia”

¹⁶⁰ See D.C.M.R. §§ 31-808, 31-899

¹⁶¹ See *id.*

¹⁶² <http://www.washingtoncitypaper.com/blogs/citydesk/2013/04/12/taxi-commission-will-regulate-rideshare-drivers/>

[w]e are concerned the private cars used to provide these services have only ordinary, non-commercial insurance that we believe may deny coverage to passengers in the event of an accident. These vehicles do not display the required commercial tags from the Department of Motor Vehicles, and these operators do not have licenses from the Commission, which therefore cannot verify their safety. The Commission will take legal action against any person knowingly flouting District law by connecting passengers to unlicensed vehicles or operators.

The DCTC takes the position that the business models of SideCar, Lyft and other similarly operating “ridesharing” app companies are a form of digital dispatchers for a public vehicle-for-hire service. The proposition that a “suggested donation” is not payment appears disingenuous to the DCTC which believes the prospect of payment incentivizes drivers to offer their vehicle and services with the expectation of making money. As a result, the vehicles and operators that provide this “ridesharing” service must be licensed by the Commission, and companies like SideCar will be required to comply with the digital dispatch rules now pending in Chapter 16 of Title 31 of the DC Municipal Regulations (“DCMR”)¹⁶³. The District believes that such drivers/vehicles are simply trying to provide sedan service as outlined in the newly passed Chapter 12 of Title 31 of the DCMR¹⁶⁴

Accordingly, the DCTC has rolled out an enforcement program to cite and impound SideCar vehicles operating in the District. Although the Commission is empowered to enact rules to define and regulate new classes of public vehicle-for-hire services, it has not yet done so for ridesharing. The DCTC believes that the “ridesharing” service provided by *inter alia*, SideCar, raises serious questions about passenger safety. In addition to the enforcement program, the DCTC law department intends on publicly releasing a legal opinion on ridesharing shortly.

¹⁶³

<http://dctaxi.dc.gov/sites/default/files/dc/sites/dc%20taxi/publication/attachments/Chapter16SecondProposedRulemakingDispatchServices5113.pdf>

¹⁶⁴ DCMR § 1299.1; available at

<http://dctaxi.dc.gov/sites/default/files/dc/sites/dc%20taxi/publication/attachments/finalChapter12SecondProposedRulemakingLuxuryClassService5113.pdf>

Philadelphia, Pennsylvania

(a) *Regulatory Overview*

The Philadelphia Parking Authority (the “PPA”) regulates taxicabs and for-hire vehicles in the City of Philadelphia. The Philadelphia for-hire vehicle rules are set forth in the Philadelphia Parking Authority – Taxicab and Limousine Regulations, 52 Pennsylvania Code Part II, §§ 1001.1, *et seq.* (the “PPA Regulations”). “Taxicab service” is defined under the PPA regulations as “the transportation of passengers or offering to transport passengers in a taxicab as a common carrier call or on-demand service in Philadelphia.”¹⁶⁵ Limousine service refers to a motor vehicle providing any of the following services: (i) Local, nonscheduled common carrier service for passengers on an exclusive basis for compensation; or (ii) Common carrier service for passengers for compensation to or from any airport, railroad station or hotel located in whole or in part in a city.¹⁶⁶

(b) *Ridesharing Exemptions*

A “ridesharing arrangement” is defined in Pennsylvania Statutes Title 55, Navigation Chapter 17F, section 695.1, as the transportation of not more than 15 passengers where the transportation is “incidental” to the driver’s purpose.¹⁶⁷ The driver also cannot be engaged in the “business of transportation”, which is undefined in the law.¹⁶⁸

If a program qualifies as a “ridesharing arrangement,” the program is not subject to the following: (1) public utilities restrictions; (2) special insurance requirements for motor carriers; (3) laws imposing a greater standard of care on motor carriers than on other vehicles; or (4) laws imposing special equipment requirements and special accident reporting requirements.¹⁶⁹ Pennsylvania does not exempt “non-commercial enterprises” or other similar programs from the above-mentioned regulations. The states’ definition for a “ridesharing arrangement” does not mention a start or end point. As long as the transportation is “incidental” to the driver’s purpose, the arrangement qualifies as ridesharing.

¹⁶⁵ 52 Pa. Code § 1001.10.

¹⁶⁶ 53 PA. CONS. STAT. § 5701

¹⁶⁷ 55 P.S. § 695.1

¹⁶⁸ *Id.*

¹⁶⁹ 55 P.S. § 695.2

Pennsylvania’s “ridesharing arrangement” law was further interpreted in the state court case, *Community Car Pool Service v. Pennsylvania Public Utility Comm’n*. In *Community Car*, the Court held that a for-profit, third-party provider of vanpooling services was not within the definition of a “ridesharing arrangement,” but was a common-carrier service subject to regulation by the Public Utility Commission.¹⁷⁰ Community Car Pool Service was providing a vanpooling service where passenger vans owned by the provider transported passengers to and from their homes to their workplaces.¹⁷¹ Each passenger paid a monthly charge for transportation. The driver of each van, chosen by the passengers, did not receive cash payments, but received free transportation to and from work and expense reimbursement. The Court deemed these drivers as “mere agents” of the third-party provider that receive non-cash compensation.¹⁷² However, because these agents indirectly “furthered” a transportation business, the provider could no longer claim that the business was a “ridesharing arrangement.”

(c) How is Philadelphia Addressing Ridesharing Apps?

On February 25, 2013, approximately two weeks after launching operations in Philadelphia (its first east coast jurisdiction), SideCar was shut down by the PPA.¹⁷³ The PPA deployed undercover inspectors to use SideCar in order to shut down individual drivers, impound vehicles, and to assess thousands of dollars in fines due to the drivers’ lack of proper licensure and failure to submit to the PPA background checks which are required of all for-hire vehicle drivers.

Reports surfaced shortly after the enforcement program, that on March 1, 2013, the PPA met with counsel for SideCar, at which meeting the parties discussed public safety concerns and whether SideCar passengers are required to pay for services provided through the app.¹⁷⁴ Thereafter, a PPA spokesperson reportedly stated “Because they are not asking for compensation . . . we have no jurisdiction.”¹⁷⁵

¹⁷⁰ 533 A.2d 491, 494 (Pa. Cmwlth. 1987). The Act 95 of 2004 transferred oversight of medallion taxicabs from the state’s Public Utility Commission to the PPA. See

http://www.puc.state.pa.us/utility_industry/transportation/motor_carrier/philadelphia_taxicabs_and_limousines_.aspx

¹⁷¹ *Id.* at 492.

¹⁷² *Id.* at 494.

¹⁷³ http://blogs.phillymag.com/the_philly_post/2013/02/25/review-google-philadelphia-ride-share-service-sidecar-shut-down-by-city-ppa/

¹⁷⁴ http://articles.philly.com/2013-03-03/news/37392686_1_sidecar-smartphone-app-private-vehicles

¹⁷⁵ http://articles.philly.com/2013-03-03/news/37392686_1_sidecar-smartphone-app-private-vehicles

On March 2, 2013, SideCar posted an announcement on their website which outlines their current operations in Philadelphia:

We've met with city officials in [Philadelphia]. They've assured us they will not fine or impound vehicles if rides are free under our new brand ambassador program. Riders are not, and have never been, at risk for prosecution whether they make a donation or not.

SideCar operates in . . . Philadelphia on Friday and Saturdays nights from 5PM – 3AM.¹⁷⁶

SideCar is reportedly paying drivers \$15 an hour to promote its service through its “brand ambassador” program.¹⁷⁷ This is to keep the SideCar brand present in the Philadelphia market. The company indicated that it hopes to reach an understanding with the PPA that will solve the current situation and permit SideCar to operate.¹⁷⁸ However, officials from the PPA have indicated that the lack of proper insurance coverage, driver background checks and general safety concerns remain a problematic area that would require SideCar to overhaul its business model.¹⁷⁹ Indeed, the PPA views SideCar services as being very similar to taxicab service.¹⁸⁰

SideCar has appealed the citations it was issued by the PPA, the decision for which is pending. It can be speculated that SideCar is attempting to rely on the state's ridesharing arrangement statute to argue that it is exempt from the PPA's jurisdiction and from the requirements imposed on for-hire vehicle transportation operators. Nevertheless, the PPA seems steadfast in prohibiting SideCar from providing unlicensed, on-demand, for-hire transportation service. Although the PPA is open to dialogue with SideCar, in order to hear proposals for becoming compliant under PPA regulations, officials at the PPA have indicated that they consider the possibility of success in achieving such compliance very dubious, unless absolutely no cash or compensation is given to the driver by passengers.

¹⁷⁶ www.side.cr. The assignment may be found at <http://blog.side.cr/2013/03/02/hey-austin-and-philly-ride-free-tonight/>

¹⁷⁷ <http://www.newsworks.org/index.php/local//onward/51962-inside-the-philadelphia-parking-authoritys-feud-with-sidecar>

¹⁷⁸ <http://www.newsworks.org/index.php/local//onward/51962-inside-the-philadelphia-parking-authoritys-feud-with-sidecar>

¹⁷⁹ <http://www.newsworks.org/index.php/local//onward/51962-inside-the-philadelphia-parking-authoritys-feud-with-sidecar>

¹⁸⁰ <http://www.newsworks.org/index.php/local//onward/51962-inside-the-philadelphia-parking-authoritys-feud-with-sidecar>

Boston, Massachusetts

(a) *Regulatory Framework*

For-hire vehicles in Boston known as Hackney Carriages, are regulated by the Hackney Carriage Unit of the Boston Police Department. The relevant industry regulations can be found in Rule 403 of the Boston Police Department, Hackney Carriage Rules and Flat Rate Handbook (“Hackney Carriage Rules and Regulations”).¹⁸¹ A “Hackney Carriage” is defined as “[a] vehicle used or designed to be used for the conveyance of persons for hire from place to place within the city of Boston.”¹⁸² Pursuant to Section 2, III Hackney Carriage Drivers must be licensed through the Hackney Carriage Unit.¹⁸³

(b) *Ridesharing Not Defined*

Ridesharing is not defined under the Commonwealth of Massachusetts or the City of Boston’s laws. As a result, the regulators may consider a ridesharing vehicle to be a “Hackney Carriage”.

(c) *How is Boston Addressing Ridesharing Apps?*

Based upon media reports, no action has been taken by regulators to prohibit ridesharing apps.

Seattle, Washington

(a) *Regulatory Framework*

For-hire vehicles and taxicabs operating in Seattle, Washington are regulated by the Consumer Affairs Unit of the City of Seattle. The relevant industry regulations are set forth in Chapter 6.130 of the City of Seattle’s Municipal Code (“SMC”) and Title 46 of the Revised Code of Washington (RCW). Under the SMC, a “for-hire vehicle” means any motor vehicle used for the transportation of passengers for compensation, except (a) taxicabs; (b) school buses operating exclusively under a contract to a school district; (c) ride-sharing vehicles under Chapter 46.74 RCW; (d) limousine carriers licensed under Chapter 81.90 RCW; (e) vehicles used by nonprofit transportation providers solely for elderly or handicapped persons and their

¹⁸¹ <http://www.cityofboston.gov/police/hackney/drivers.asp>

¹⁸² Hackney Carriage Rules and Regulations, Section 1, I(b).

¹⁸³ Hackney Carriage Rules and Regulations, Section 2, III.

attendants under Chapter 81.66 RCW; (f) vehicles used by auto transportation companies licensed under Chapter 81.68 RCW; (g) vehicles used to provide courtesy transportation at no charge to and from parking lots, hotels, and rental offices; and (h) vehicles licensed under, and used to provide “charter party carrier” and “excursion service carrier” services as defined in, and required by, Chapter 81.70 RCW.¹⁸⁴ This definition is nearly identical to the state law at RCW 46.72.010.

Under the SMC, it is unlawful to own, lease, drive or operate any for-hire vehicle unless the for-hire driver and for-hire vehicle are properly licensed under the SMC.¹⁸⁵ Violations are criminal misdemeanors and violators are subject to a fine of up to One Thousand Dollars (\$1,000.00) and imprisonment for a term not to exceed ninety (90) days.¹⁸⁶

(b) “Commuter Ride Sharing”

Pursuant to Chapter 46.74 of the RCW, “commuter ride sharing”¹⁸⁷ and “flexible commuter ride sharing”¹⁸⁸ are defined as a carpool or vanpool arrangement where a group of people¹⁸⁹, including the driver, are transported between “their places of abode or termini near such places and their places of employment or educational or other institutions.” Each group must be driven in a single daily roundtrip where the drivers are also driving to and from their places of employment or educational or other institutions. Neither “commuter ride sharing” nor “flexible commuter ride sharing” are subject to for-hire regulations under State or City regulations.¹⁹⁰ Additionally, drivers in “commuter ride sharing” or “flexible commuter ride sharing” programs are not subject to regulations for for-hire drivers.¹⁹¹

¹⁸⁴ SMC 6.310.110K; RCW 46.72.010

¹⁸⁵ SMC 6.310.130

¹⁸⁶ SMC 6.310.600

¹⁸⁷ RCW 46.74.010(1)

¹⁸⁸ RCW 46.74.010(2)

¹⁸⁹ The definitions of Commuter Ride Sharing and Flexible Commuter ride sharing are substantially similar, the primary difference being that Commuter Ride Sharing is defined as a group of four (4) to fifteen (15) people and Flexible Commuter Ridesharing is defined as a group of two (2) to fifteen (15) people.

¹⁹⁰ RCWA 46.74.020; SMC 6.310.110.K3

¹⁹¹ RCWA 46.74.030

(c) *How is Seattle addressing Ridesharing Apps?*

Currently, Sidecar and Lyft are operating donation based “ride-share” services in Seattle. Denise Movius, director of Seattle’s Revenue and Consumer Affairs Division reportedly stated that Lyft cars “should be regulated because they do qualify as a for-hire vehicle because money is exchanging hands. To that extent, they are required to have a for-hire license.”¹⁹² A Special City Council Committee on Taxicabs, For-Hire Vehicles and Limousines has held and is continuing to hold public hearings regarding the existing market for Taxi, For-hire and Limousine services in Seattle, the current approach to the regulation of these services and potential modifications to this regulatory structure.¹⁹³ An agenda item for the May 23, 2013 hearing is “New Entrants to the Taxi, Fore Hire, and Limousine Industry – A review of ‘ridesharing’ and on-demand car service ‘apps’ providing service in Seattle.”¹⁹⁴ It is expected that the Committee will issue a proposal on regulation of ridesharing companies operating in Seattle.

Chicago, Illinois

(a) *Regulatory Framework*

For-hire vehicles in the City of Chicago are known as Public Passenger Vehicles and are regulated by the Department of Business Affairs and Consumer Protection (the “BACP”).¹⁹⁵ The rules and regulations governing taxicabs and public passenger vehicles-for hire are located in the Taxicab Medallion License Holder Rules and regulations and the Public Chauffeurs Rules and Regulations, both promulgated and enforced by the City of Chicago Department of Business Affairs and Consumer Protection, Public Vehicle Operations Division¹⁹⁶ and Chapter 9-112 of the Municipal Code of Chicago (“MCC”).

A “public passenger vehicle” means a motor vehicle, as defined in the motor vehicle law of the State of Illinois, which is used for the transportation of passengers for hire, excepting those (1) devoted exclusively for funeral use; (2) in operation of a metropolitan transit authority; (3)

¹⁹² <http://www.kirotv.com/news/news/seattle-says-new-ridesharing-service-illegal/nXXGJ/>

¹⁹³ <http://www.seattle.gov/council/issues/taxis.html>

¹⁹⁴ <http://clerk.seattle.gov/~scripts/nph-brs.exe?s1=&S3=Taxi.COMM.+and+%40DATE%3E%3D20130000&s2=&s4=&Sect4=AND&l=30&Sect6=HITOFF&Sect5=AGEN1&Sect3=PLURON&d=AGEN&p=1&u=%2F%7Epublic%2Fagen1.htm&r=1&f=G>

¹⁹⁵ http://www.cityofchicago.org/content/city/en/depts/bacp/supp_info/bacppublicvehicles.html

¹⁹⁶ <http://www.cityofchicago.org/content/dam/city/depts/bacp/rulesandregs/publicchauffeursrulesregs20131203.PDF>

interstate carriers licensed for the transportation of passengers by the Interstate Commerce Commission to the extent that regulation of such vehicles by the city is prohibited by federal law; (4) interstate carriers operating pursuant to and in conformity with a certificate of authority issued by the Illinois Commerce Commission; and (5) taxicabs regulated pursuant to Chapter 9-112 of this Code. Public passenger vehicles addressed in the provisions of this chapter include, but are not limited to, livery vehicles, charter/sightseeing vehicles, neighborhood electric vehicles, jitney car services, and medical carrier vehicles.”¹⁹⁷ Under the Municipal Code of Chicago (“MCC”), “[i]t is unlawful for any person to operate a motor vehicle, or for the registered owner thereof to permit it to be operated, for the transportation of passengers for hire within the city unless it is licensed by the city as a public passenger vehicle pursuant to this chapter, or as a taxicab pursuant to Chapter 9-112.”¹⁹⁸

(b) “Shared Ride” Defined

The Chicago PCRR defines “Shared Ride” as “a shared cab trip of a minimum of two (2) passengers and maximum of four (4) passengers with destination(s) within specified boundaries that originates from specified locations for a designated fee.”¹⁹⁹ Section XIV of the Chicago PCRR sets forth the parameters of the Shared Ride Program which essentially allows licensed taxicabs operated by licensed cab drivers to transport two (2) to four (4) passengers at reduced fares, which are set forth in the PCRR, when traveling between O’Hare or Midway Airport and certain places within specified City boundaries.²⁰⁰

(c) *How is Chicago Addressing Ridesharing Apps?*

Although other cities mentioned in this report with similar definitions for “for hire” vehicles have been ticketing or fining ridesharing vehicles operated by companies such as SideCar and Lyft, Chicago does not yet have reported activity on ridesharing so it has not issued tickets or fines associated with ridesharing vehicles at this time. Jennifer Lipford, Director of Public Information at the Chicago Department of Business Affairs and Consumer Protection reportedly stated, as to Lyft and other ride-sharing companies, “It’s obviously something that

¹⁹⁷ 9-114-020(a) MCC

¹⁹⁸ 9-114-010 MCC

¹⁹⁹ Chicago Public Chauffeurs Rules and Regulations, Definitions, “Shared Ride”; 9-112-560(f) MCC

²⁰⁰ Chicago Public Chauffeurs Rules and Regulations, Section VIV; 9-112-560(f) MCC

we’re keeping an eye on... We want to make sure they’re operating safely and that consumers are protected.”²⁰¹

Austin, Texas

(a) *Regulatory Framework*

The City of Austin Transportation Department (“Austin TD”) is responsible for regulating for-hire ground transportation service in the City of Austin. Regulations governing ground transportation service are promulgated by the Austin City Council and may be found in the Austin City Code §§ 13-2-1, *et seq.*²⁰² Ground transportation service is defined in the Austin City Code as “the service of providing chauffeured vehicles for compensation for the transportation of passengers within the city.”²⁰³ Ground transportation includes limousine service,²⁰⁴ which consists of prearranged service that is operated on irregular routes and schedules.²⁰⁵ Taxicab service is defined as “service that operates on irregular routes and schedules on a call-and-demand basis, for a fee for that is usually determined by a taximeter.”²⁰⁶ Operators of ground transportation vehicles and taxicabs must obtain authority to provide such transportation service in Austin.²⁰⁷ The Austin City Code also defines “compensation”, as referred to in the definition of “ground transportation” as “any money, thing of value, payment, consideration, reward, tip, donation, gratuity, or profit paid to, accepted, or received by the driver or owner of any vehicle providing transportation for a person, or persons; whether paid upon solicitation, demand or contract, or voluntarily, or intended as a gratuity or donation.”²⁰⁸

²⁰¹ <http://www.chicagogrid.com/features/car-strangers-lyft-banking-it/?print=true>

²⁰²

[http://www.amlegal.com/nxt/gateway.dll/Texas/austin/thecodeofthecityofaustintexas?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:austin_tx\\$anc=](http://www.amlegal.com/nxt/gateway.dll/Texas/austin/thecodeofthecityofaustintexas?f=templates$fn=default.htm$3.0$vid=amlegal:austin_tx$anc=)

²⁰³ See Austin City Code § 13-2-1(11). Although “chauffeur” is not defined in the City Code, “chauffeur’s permit” is considered written permission granted to an individual by the department to chauffeur a vehicle under the authority granted to a franchise holder or holder. *Id.* at (1). In order to be evaluated and granted a Chauffeur’s Permit, the Austin TD requires the sponsorship of each driver by one of three (3) ground transportation franchises, submission of criminal history, and driving record certified by the Texas Department of Safety. See <http://austintexas.gov/sites/default/files/files/Transportation/Parking/Ch%20App%204.pdf>

²⁰⁴ In addition to limousine service, ground transportation service in Austin also includes airport shuttle service (Austin City Code § 13-2-211); shuttle service (Austin City Code § 13-2-231); charter service (Austin City Code § 13-2-251) and touring & sightseeing services (Austin City Code § 13-2-281).

²⁰⁵ Austin City Code § 13-2-201

²⁰⁶ See Austin City Code § 13-2-301

²⁰⁷ See e.g., Austin City Code §§ 13-2-1(8) and (15).

²⁰⁸ See e.g., Austin City Code §§ 13-2-1(3).

(b) *Ridesharing is not Defined*

Ridesharing is not defined in the Austin City Code. As a result, the Austin TD may view the donations received by drivers, from passengers who participate in a ridesharing trip coordinated by a “ridesharing” app, as “compensation”, as defined in the City Code. Accordingly, the ridesharing may be considered ground transportation service and/or taxicab service, requiring licensure.

(c) *How is Austin Addressing Ridesharing Apps?*

The Austin TD has been attempting to shut down unlicensed for-hire vehicle services for the past year in response to complaints from the taxicab and ground transportation of safety and regulatory concerns associated with the ridesharing apps SideCar and Heyride. As mentioned *supra*, SideCar acquired Heyride in early February 2013. Prior to that acquisition, Heyride had been operating in Austin, and had received a cease and desist letter and criminal citations against drivers and Heyride’s CEO, from the Austin TD in late November 2012. When SideCar subsequently acquired Heyride, it was with full knowledge that Heyride was involved in an ongoing dispute with the Austin authorities.

Following the acquisition, the Austin TD issued a cease and desist letter to SideCar²⁰⁹, wherein the City claimed that “operating an unpermitted vehicle for-hire without prior authorization is a criminal offence” and that “vehicles and drivers observed providing for-hire services without proper permits will be cited, along with ‘SideCar’ corporate representatives, for each violation.” In response to Austin TD’s letter, SideCar disagreed with Austin TD’s interpretation of the City Code asserting *inter alia*, the following:

1. SideCar is a technology company that built and maintains a communication platform for individuals to locate each other to share rides. SideCar does not “provide or operate” a “ground transportation service” as defined in the Code.
2. The City Code only regulates “chauffeured vehicle,” and neither SideCar nor people coordinating rideshares using SideCar are “chauffeurs”.
3. “Chauffeured vehicles” pick-up riders in the city “for a fee”, and any payments made using SideCar are strictly voluntary, discretionary donations and not “a fee”.²¹⁰

²⁰⁹ Letter dated February 15, 2013 from Austin Transportation Department to Side.cr LLC.

²¹⁰ Letter from Sunil Paul, CEO SideCar Technologies, Inc., the parent company of Side.cr LLC, and Memorandum dated February 27, 2013, of Peter D. Kennedy, Graves Dougherty, Hearon & Moody, P.C.

On March 7, 2013, the Austin City Council approved a resolution to examine how other cities regulate ridesharing, and directing Staff to make recommendations to the Council by June 1st regarding how to address ridesharing apps. About the same time, SideCar announced that it would provide free transportation to the South by Southwest interactive music festival (“SXSW”) attendees and that instead of getting paid “donations”, drivers would be paid an hourly rate for their services by SideCar as “brand ambassadors”, similar to their initiative in Philadelphia.²¹¹ Sunil Paul, SideCar CEO, also announced that he “was eager to engage and have constructive conversations with city officials.”²¹²

However, shortly thereafter, SideCar filed a complaint for a declaratory judgment against the Austin TD for threatening to cite drivers who use SideCar and SideCar’s corporate representatives for violating the City Code. The complaint seeks a declaration that SideCar is not providing “ground based transportation” as defined in the City Code, and injunctive relief to prevent the City from “wrongly applying the City Code to [SideCar] and its users. SideCar also brings this lawsuit to defend ridesharing and carpooling in Austin”.

On April 19, 2013, the District Court of Texas, Travis County denied SideCar’s request for a temporary injunction finding SideCar did not plead sufficient constitutional or statutory basis for its challenge against a governmental entity. Further, a trial was scheduled for Tuesday, April 23, 2013 based on the November 2012 criminal citations issued to “Heyride”. The Heyride CEO was given a deferred disposition and the driver plead guilty to “No operating permit,” and the “No chauffeur’s permit” was dismissed.

SideCar was not alone in offering its services for free during the SXSW. Uber announced that it would be making promotional UberX rides free for the week of SXSW, in addition to offering Uber’s pedicab rides from previous years. Lyft launched “Lyft Piggyback On-Demand”, which allowed SXSW attendees to request on-demand “piggybacks” through the app, and watch, on their smartphone, the “piggy backer” approaching to (literally) pick them up,

²¹¹ SideCar’s Petition, Exhibit “3”, *Letter dated March 1, 2013 to Austin TD from Peter D. Kennedy, Graves Dougherty, Hearon & Moody, P.C. Counsel*, “The Brand Ambassadors are independent contractors. As part of their duties, these Brand Ambassadors will drive their own vehicles and accept rides requested through the SideCar mobile app. These are the drivers who SideCar is currently advertising to hire. In addition to confirming their drivers’ licenses and vehicle liability insurance, SideCar is obtaining additional insurance coverage for these Brand Ambassadors. The Brand Ambassadors will not accept voluntary donations through the SideCar app, and SideCar will not receive any revenue from rides given by Brand Ambassadors. Brand Ambassadors will be instructed not to accept any tips or other compensation whatsoever from riders. The rides they will be giving therefore will be free of any “compensation” or “fee” under the City Transportation Code.”

²¹² www.austinchronicle.com/news/2013-03-15/sidecar-to-city-have-app-will-travel-to-court

sporting the pink moustache.

Indeed, the promotional initiatives of Lyft, through their “community managers” and SideCar, through the “brand ambassadors”, are having a positive effect on tech savvy user numbers in Austin. SideCar’s founder initiated a petition on change.org urging Austin to embrace ridesharing and he has received substantial support with over 3,600 signatures.²¹³

Since its battle with SideCar, Lyft and other similarly operating ridesharing apps, the Austin City Council has begun considering amendments to its regulations to add the following new definitions of “chauffeur”, “e-hail”, and “rideshare” and to amend the definitions of “compensation”, “ground transportation services”, and “passenger:

CHAUFFEUR means a person who operates a ground transportation service vehicle dispatched either by hail, telephonic, radio, or any electronic communication, including an E-Hail indicating the location of a passenger for immediate or prearranged transportation service.

COMPENSATION means any money, thing of value, payment, consideration, reward, tip, donation, gratuity, of profit paid to, accepted, or received by the driver or owner of any vehicle providing transportation for a person, or persons; whether paid upon solicitation, demand or contract, or voluntarily, or intended as a gratuity or donation. Reimbursement for the following is not compensation: (1) tolls; and (2) vehicle operating costs in an amount that is equal to or less than the most current privately-owned vehicle mileage reimbursement rates established by the U.S. General Services Administration.

E-HAIL is the use of any electronic device in any manner, including email, text message, push notification or application for the booking of, or request, for, immediate or prearranged transportation services.

GROUND TRANSPORTATION SERVICE means the service of providing chauffeured vehicles for compensation for the transportation of passengers within the city. Rideshares are not ground transportation services.

PASSENGER means an individual being transported for compensation [a fee] in a ground transportation service vehicle.

RIDESHARE is the travelling of two or more persons by any mode of private passenger vehicle, including, but not limited to, carpooling, vanpooling, buspooling, to any location incidental to another purpose of the

The proposed definitions will be voted on by the City Council on May 23, 2013.

²¹³ <http://www.change.org/petitions/austin-city-council-support-sharing-in-austin>

IATR EFFORTS AND MODEL REGULATIONS

The IATR is a peer group of taxi, limousine and for-hire transportation regulators from around the world, dedicated to improving the practice of licensing, enforcement and administration of for-hire transportation through the sharing of information and resources. Member jurisdictions include taxi and limousine commissions from various jurisdictions with the sole responsibility for the governance and control of for-hire transportation licensing and enforcement; police departments and other law enforcement agencies with the responsibility of administering and enforcing for-hire transportation regulations and consumer protection; transportation agencies with responsibility for public safety and service quality; and airport authorities that regulate airport ground transportation. For some time, the IATR has recognized the emergence of smartphone apps, as one of the most exciting and innovative changes to the transportation industry. However, some apps operate in a manner that creates serious concerns for the public and regulators alike.

To that end, last year, the IATR published a seminal report on the status of the operations of transportation technology companies entitled:

“Rogue” Smartphone Applications for Taxicabs and Limousines: Innovation or Unfair Competition?

*A National Regulatory Review of Safety, Accountability and Consumer Protection Legal Issues*²¹⁴

As a follow-up, the IATR created a Special App Committee (“App Committee”) to study the issue of rogue transportation technology companies, and to draft model regulations for potential adoption internationally and within the U.S with the purpose “to develop model regulations to ensure smartphone app technology can exist fairly, safely and with accountability to protect the consumer, while also protecting existing businesses against unfair competition.” Included therein was the first draft of the proposed model definition for “Rideshare”.

The IATR App committee includes government regulators from several countries and most major cities in the U.S., including: Washington, DC; Chicago; Boston; Seattle; Denver; San Francisco; San Diego; Los Angeles; Philadelphia; Austin; Houston; Toronto; Montreal; Australia; as well as non-regulatory Federal government agencies like the National Institute of Standards and Technology (“NIST”); and the National Conference on Weights and Measures.

²¹⁴ The Report is available to the public at http://www.windelsmarx.com/news_detail.cfm?id=127

The App Committee introduced the proposed model definition for “Rideshare” at an IATR international public hearing held on November 17, 2012, as part of the IATR’s 25th Anniversary conference held in Washington, DC.²¹⁵ Thus far, the Report and the draft model definition of “Rideshare” have engendered much discussion about app companies.

Further, throughout the past year, the IATR has addressed many of the issues presented by ridesharing app companies in rulemaking proceedings and public hearings across the country. The IATR has been an active party to the CPUC’s OIR, engaging in the exchange of comments, and the requests for information from the ridesharing app companies that are also parties to the proceeding. It is the position of the IATR that the responsibility of public safety and liability belongs to the company profiting from providing transportation services, and as such, ridesharing app companies that provide for-hire services, should be licensed like all other similarly operating for-hire transportation service operators.

Regulators and policymakers are charged with the task to fully vet these new ridesharing app companies, to conduct an in-depth review and investigation of their business models and services, and to engage in conversation and analysis of the issues raised herein, in order to maintain the mission of most local transportation authorities, to protect the consumer, and to ensure access to safe and reliable transportation services. The attempts of rogue ridesharing apps to avoid regulation are tantamount to the deregulation of the for-hire vehicle industry, which history has shown not only hurts the public in general by, *inter alia*, producing higher fares, decrease in service quality and a decline in efficiency, but also does not work.²¹⁶ Accordingly, if a jurisdiction has existing regulations on the books that prohibit the business operations of ridesharing apps and/or which requires licensure of ridesharing apps, such regulations must be enforced. However, to the extent that a jurisdiction does not have applicable regulations, the IATR offers the model definition of “Rideshare”, annexed hereto, to draw a clear demarcation between activity which is truly ridesharing and activity that is, in actuality, for-hire transportation service, and which accordingly, should be licensed and subject to meeting government’s public safety standards.

²¹⁵ The details on the conference may be found at the IATR website www.iatr.org. A copy of the model regulations may be found online at www.windelsmarx.com.

²¹⁶ See e.g., Taxi Industry Regulation, Deregulation and Reregulation: The Paradox of Market Failure by Paul Stephen Dempsey, University of Denver College of Law, Transportation Law Journal, Vol. 24, Issue 1, pp. 73-120 (1996). Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2241306

CONCLUSION

As one can see, the advent of ridesharing app companies has certainly challenged local transportation authorities to examine their existing regulations in order to determine whether the business model presented by such companies meets the local definition for rideshare, or whether it is more akin to for-hire vehicle service. Throughout the country, local regulators are concerned about whether the public is adequately protected when they accept a trip provided through a ridesharing app, because it is unknown whether adequate insurance exists amongst the drivers and vehicles associated with ridesharing app companies. In light of the PIFC's Comments to the Ca OIR which state that the personal liability insurance of most private drivers would not extend to cover trips provided under the business operations of ridesharing app companies, such a concern is legitimate.

Indeed, in addition to proper insurance coverage, some regulators are concerned that ridesharing apps enable drivers to provide transportation services for-hire, without meeting any of the other government-mandated requirements of for-hire vehicles or drivers. Without accountability or oversight, the public is vulnerable to, amongst other things, inconsistent and/or inappropriate costs for fares; being picked-up by drivers who have not been subject to thorough background checks and being transported in old, dangerous and/or unreliable vehicles.

One way regulators are attempting to address and eventually reconcile these issues, is through heavy enforcement programs to stop ridesharing apps from operating before a clear determination has been made regarding their proper classification within the transportation space. Other transportation authorities are proposing amendments to their transportation rules in an attempt to make clear their position as to what they consider to be ridesharing. To this end, we annex a proposed definition for "Rideshare". This proposed definition does not address all of the issues discussed in this Report and instead, is being offered as a means to outline a clear distinction between true ridesharing services, which are not-for-profit and outside of the jurisdiction of local regulators, and for-hire vehicle services, which are subject to for-hire transportation requirements. Hopefully this Report, and the model definition for "Rideshare" annexed hereto, furthers the dialogue currently taking place across the U.S., in addition to presenting options for transportation regulators and airport operators in other jurisdictions addressing ridesharing app companies and the services they provide.

APPENDIX A

Model Rideshare Regulation

Rideshare: The travelling of two or more persons by any mode of private passenger vehicle, including, but not limited to, carpooling, vanpooling, buspooling, to any location incidental to another purpose of the driver, without charge, fee, or payment, for which a gratuity is neither accepted, collected, encouraged, promoted and/or requested, and for which the primary purpose of the driver cannot be profit or revenue based. Gratuity herein shall not include reimbursement for fuel usage and/or tolls. Currency or any other form of electronic payment or other consideration collected in excess of reimbursement for fuel usage and/or tolls shall be considered for-hire transportation, and such applicable licenses are required. Rideshare transportation that satisfies the definition herein is exempt from [regulatory body] licensure. However, if any trip purported to be provided through a rideshare is made with a for-profit motive, such transportation will be considered for-hire transportation and such applicable licenses are required. Rideshare services that satisfy the definition herein exclude any and all for-hire transportation requirements as defined within this Code.

APPENDIX B

1- California Public Utilities Commission Citations/Cease and Desist Letters

http://www.windelsmarx.com/public_document.cfm?id=231&key=23B3

2- San Francisco International Airport Cease and Desist Letter

http://www.windelsmarx.com/public_document.cfm?id=232&key=0C0

3- Austin Transportation Department Cease and Desist Letter

http://www.windelsmarx.com/public_document.cfm?id=233&key=6D1

4- City of Dallas Cease and Desist Letter

http://www.windelsmarx.com/public_document.cfm?id=234&key=12E2

5- Philadelphia Parking Authority Citations/Cease and Desist Letter

http://www.windelsmarx.com/public_document.cfm?id=235&key=18F3

6- New York City Taxi & Limousine Commission Decision

http://www.windelsmarx.com/public_document.cfm?id=236&key=24G0

7- Los Angeles Department of Transportation Cease & Desist Letters

http://www.windelsmarx.com/public_document.cfm?id=237&key=1H1